

(28,336)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 381.

SIOUX CITY BRIDGE COMPANY, PETITIONER,

vs.

DAKOTA COUNTY, NEBRASKA.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF NEBRASKA.

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1 In re Appeal of Sioux City Bridge Company.

No. 21252.

SIoux CITY BRIDGE COMPANY

v.

DAKOTA COUNTY.

Pleas.

Before the Supreme Court of the State of Nebraska at a Term Thereof Begun and Holden at the Capitol, in the City of Lincoln, in said State, on the 3d Day of January, 1921.

Present:

Hon. Andrew M. Morrissey, Chief Justice.

Hon. Charles B. Letton, Judge.

Hon. William B. Rose, Judge.

Hon. James R. Dean, Judge.

Hon. Chester H. Aldrich, Judge.

Hon. George A. Day, Judge.

Hon. Leonard A. Flansburg, Judge.

Attest:

H. C. LINDSAY,
Clerk.

Be it remembered, That on the 22d day of September, 1919, there was filed in the office of the Clerk of said Supreme Court, a certain *Præcipe* in the words and figures following, to wit:

2 In the Supreme Court of the State of Nebraska.

In the Matter of the Assessment of THE SIoux CITY BRIDGE COMPANY.

Præcipe.

To the clerk of said court:

This is an appeal by the Sioux City Bridge Company from a judgment entered by the District Court of Dakota County on the fourth of August, 1919, fixing the valuation of appellant's property in Dakota County, Nebraska, for taxing purpose. In the District Court the Sioux City Bridge Company was appellant and Dakota County was appellee, said proceeding having been an appeal from the Board of Equalization. In the Supreme Court Sioux City Bridge Company is appellant and Dakota County is Appellee.

Dated at Omaha, Nebraska this 19th day of September, A. D. 1919.

WYMER DRESSLER,
J. L. ROOT,
Attorneys for Appellant.

Endorsed: In the Supreme Court of Nebraska. 21252. In the Matter of the Assessment of the Sioux City Bridge Company. Præcipe. Wymer Dressler, C. H. Gormon, Attorneys for Appellant. Supreme Court of Nebraska, filed September 22, 1919. H. C. Linsay, Clerk.

3 And on the same day, to wit, September 22, 1919, there was filed in the office of the Clerk of said Supreme Court, a certain Transcript in the words and figures following, to wit:

4 TRANSCRIPT OF PROCEEDINGS.

Transcript of Proceedings had in a case in the District Court of the Eighth Judicial District of Nebraska, in and for Dakota County, entitled as follows:

November Term, 1918.

In the Matter of the Appeal of THE SIOUX CITY BRIDGE COMPANY from the Assessment of its Property in Dakota County for Taxing Purposes.

Hon. Guy T. Graves, Judge.

W. S. Haller, Reporter.

J. S. Bacon, Clerk District Court.

Wymer Dressler & Byron Clark, Attorneys for Plaintiff.

Geo. W. Leamer, Attorney for Defendant.

Be it Remembered, that on the 17th day of July, 1918, there was filed in the office of the Clerk of District Court of the Eighth Judicial District of Nebraska, in and for Dakota County, a Notice, and afterwards subsequent pleadings in the words and figures following, to-wit:

5 *Notice.*

Filed July 17, 1918.

In the Matter of the Appeal of THE SIOUX CITY BRIDGE COMPANY from the Assessment of its Property in Dakota County for Taxing Purposes.

To the County Clerk of Dakota County, Nebraska, and Clerk of the Board of Equalization of said County:

Notice is hereby given that the Sioux City Bridge Company, a corporation will appeal to the District Court of Dakota County,

Nebraska from the action of the Board of Equalization of said County, taken on or about the 1st of July, 1918, raising the valuation of the property of said Company for taxing purposes.

A good and sufficient bond as required by law is herewith tendered and you are requested to make up a transcript of the proceedings and deliver the same to the undersigned.

Dated this 16th day of July, 1918.

SIoux CITY BRIDGE COMPANY,
A Corporation,

By BYRON CLARK.
WYMER DRESSLER.

6

Bond.

Filed July 17, 1918.

In the Matter of the Increase in the Valuation of THE SIoux CITY BRIDGE COMPANY for Taxing Purposes.

Know all men by these presents:

That the Sioux City Bridge Company, a Corporation, as principal, and National Surety Company, a corporation of the State of New York, as surety, are held and firmly bound unto Dakota County, Nebraska, in the penal sum of Five Hundred Dollars (\$500.00) for the payment whereof well and truly to be made unto said Dakota County, we bind ourselves jointly and severally, firmly by these presents.

Yet upon the condition that whereas on the 1st day of July, 1918, the Board of Equalization of Dakota County, Nebraska, made an order increasing the valuation of the property of the Sioux City Bridge Company for assessment purposes and from said order said Sioux City Bridge Company intends to appeal to the District Court of Dakota County, Nebraska, as provided by law.

Now therefore if the Sioux City Bridge Company shall prosecute said appeal according to law and shall pay the costs of said
7 appeal if the same may be finally adjudged against it, then this obligation to be void; otherwise to remain in full force and effect.

Dated this 16th day of July, 1918.

SIoux CITY BRIDGE COMPANY,
By BYRON CLARK,
WYMER DRESSLER,
Its Attorneys.

[Seal National Surety Company, New York, Incorporated 1891.]

NATIONAL SURETY COMPANY,
By W. H. WHEELER,
Attorney-in-fact.

The foregoing bond and surety are hereby approved this 17th day of July, 1918.

GEO. WILKINS,

County Clerk Dakota County, Neb.

GEO. WILKINS,

*Clerk of the Board of Equalization
of Dakota County, Nebr.*

8

Transcript of Proceedings.

Filed July 20, 1918.

Transcript of Proceedings Had Before the Board of Equalization for Dakota County, Nebraska, in the Matter of the Assessment of the Sioux City Bridge Company, a Corporation, of Omaha, Nebraska.

Dakota City, Nebraska, June 18, 1918.

The Board of Equalization for assessments of property within and for Dakota County, Nebraska, met in regular session, at 11 o'clock A. M. Present; O. W. Fisher, Chairman, A. Ira Davis, John Feller, and Geo. Wilkins, County Clerk, J. P. Rockwell, County Assessor, and Geo. W. Leamer, County Attorney.

At this time the matter of the Equalization of the value and assessment of that part of the bridge crossing the Missouri River and owned by the Sioux City Bridge Company which is taxable in Dakota County, came on for hearing.

Ward Evans, City Attorney for South Sioux City, appeared and asked to have the valuation of said bridge which is commonly known as the "high bridge" raised. William Mueller appeared on behalf of the Sioux City Bridge Company and asked to have the valuation and the assessment of said bridge lowered.

9 Whereupon the Board orders that the value and assessment of the approach of said bridge be raised from \$150,000.00 to \$200,000.00 and that the valuation and assessment of the bridge proper be raised from \$450,000.00 to \$500,000.00 or the total value and assessment of the bridge and approach be raised from \$600,000.00 to \$700,000.00.

The said Sioux City Bridge Company by William Mueller duly excepts to said order.

[The board orders that the Clerk notify the officers of the Sioux City Bridge Company that the equalization of the assessment of said Bridge will be taken up before this Board of June 28th, 1918, at 10 o'clock A. M.]*

Board adjourned to meet June 27, 1918.

O. W. FISHER,
Chairman of Board.

Attest:

GEORGE WILKINS,
County Clerk.

10

Petition on Appeal.

Filed Nov. 23, 1918.

In the District Court of Dakota County, Nebraska.

In the Matter of the Appeal of THE SIOUX CITY BRIDGE COMPANY from the Assessment of its Property in Dakota County for Taking Purposes.

Petition on Appeal.

Comes now your petitioner Sioux City Bridge Company a corporation of the State of Iowa, and for its petition on appeal from the order of the board of equalization of Dakota County, Nebraska, fixing the valuation of the bridge and approach of said Sioux City Bridge Company in Dakota County at Seven Hundred Thousand and no/100 Dollars, (\$700,000.00) and respectfully shows to the court that said valuation is excessive and should be reduced for the foll-wing reasons;

1.

Said property within the jurisdiction of Dakota County is not worth on the market the sum fixed by said board of equalization.

2.

Said valuation is not a fair and reasonable valuation.

3.

Said valuation is not the actual money value of said property but is greatly in excess thereof.

11

4.

Said valuation is in excess of the original cost of said bridge and disregards the element of depreciation, said bridge being more than thirty years old.

5.

Said valuation was fixed by the board of equalization of Dakota County without evidence and arbitrarily and irrespective of the true facts.

6.

Said valuation if permitted to stand and the Sioux City Bridge Company is compelled to pay taxes thereon will result in the Sioux City Bridge Company being denied equal protection of the law and being deprived of its property without due process of the law, in violation of the 14th Amendment of the Constitution of the United States.

7.

Said valuation if permitted to stand will violate the constitution of Nebraska which required that the taxing burdens shall be uniform and said valuation of said property is out of proportion to and greatly in excess of the relative valuations of other property in Dakota County,

Wherefore your petitioner, Sioux City Bridge Company prays the court to reduce said valuation fixed by the board of equalization of Dakota County to such sum as justice and equity require,
 12 which valuation your petitioner declares does not exceed
 Three Hundred Fifty Thousand and no/100 Dollars,
 (\$350,000.00).

SIOUX CITY BRIDGE COMPANY,
 By WYMER DRESSLER,
 BYRON CLARK,
Its Attorneys.

STATE OF NEBRASKA,
County of Douglas, ss:

Wymer Dressler on oath deposes and says that he is attorney for the Sioux City Bridge Company, a corporation, in the above entitled cause; that he has read the foregoing petition and believes the allegations therein contained to be true.

WYMER DRESSLER.

Subscribed and sworn to before me this 21st day of November
 A. D. 1918.

[Notarial Seal Ruth Levey, Douglas County, Nebraska.]

Commission expires May 12, 1923.

RUTH LEVEY,
Notary Public in and for Douglas County, Nebraska.

13 *Answer on Appeal.*

Filed — — —.

In the Matter of the Appeal of the SIOUX CITY BRIDGE COMPANY
 from the Assessment of its Property in Dakota County for Taxing
 Purposes.

Answer on Appeal.

The defendant for answer to plaintiff's petition filed herein states;

1. That the board of equalization of Dakota County in the state of Nebraska, on June 18, 1918, at a regular session of said board ordered that the value and assessment of the approach of the Sioux City Bridge Company be raised from One Hundred Fifty Thousand

Dollars (\$150,000), to Two Hundred Thousand Dollars (\$200,000), and the valuation and assessment of the bridge proper of the Sioux City Bridge Company be raised from Four Hundred Fifty Thousand Dollars (\$450,000) to Five Hundred Thousand Dollars (\$500,000) or the total value and assessment of the bridge and approach combined be raised from Six hundred thousand dollars (\$600,000) to Seven hundred thousand dollars (\$700,000).

2. Defendant denies each and every allegation in plaintiff's petition contained, save and except only such as are herein specifically admitted.

14 3. The defendant alleges and states that the value of the approach and bridge of the Sioux City Bridge Company lying within Dakota County Nebraska, and that part of said bridge and approach which is taxable in said county is Seven Hundred Thousand Dollars (\$700,000), as found and ordered by the board of equalization of said Company.

Wherefore, this defendant prays that the appeal of the Sioux City Bridge Company from the order of the board of equalization of Dakota County Nebraska be dismissed, and that the value of said bridge and approach as placed by the board of equalization of said Company be found to be correct and just, and the defendant recover its Cost herein expended.

GEO. W. LEAMER,

County Attorney, Dakota County, Nebraska.

STATE OF NEBRASKA,

County of Dakota, ss:

Geo. W. Leamer, being first duly sworn, deposes and says that he is the County attorney of Dakota County, in the State of Nebraska and as such is the attorney for the defendant in the above entitled cause; that he believes the facts stated in the foregoing answer

15 are true.

GEO. W. LEAMER.

Subscribed in my presence and sworn to before me this — day of December, 1918.

Notary Public.

Journal Entry.

Recorded in Court Journal "1," Page 561.

In the District Court of Dakota County, Nebraska.

In the Matter of the Assessment of the SIOUX CITY BRIDGE COMPANY.

Now, on this 19th day of December, A. D. 1918, it being a day of the regular November, 1918, term of this Court, this cause

came on for hearing, the parties and their attorneys appearing and being ready for trial, when the taking of the evidence for Dakota County, Nebraska, was commenced and completed, defendant rests, and the plaintiff submits its evidence in rebuttal, plaintiff rests, and thereupon the Court takes said case under advisement, to be submitted on written briefs and oral arguments of counsel, at a time of later date to be fixed by the Court.

16

Order.

Recorded in Court Journal "J," Page 55.

In the District Court of Dakota County, Nebraska.

Case No. 2664.

In the Matter of the Assessment of the SIOUX CITY BRIDGE COMPANY.

Order.

Now at this time the 4th day of August, 1919, it being a regular day of the spring term of Court, the evidence having been submitted at a previous date, and briefs having been filed by both the appellant and appellee, and the Court being duly advised in the premises does find that there is no market value for the property in controversy; that its fair, reasonable and true value is more than \$700,000.00, and that the income to said property is 8% above the taxes and upkeep on the valuation placed at \$1,121,000.00; that its depreciation in 35 years is too small to estimate; that the bridge is not modern but is serving the same purposes now, and as well as when first constructed. The Court finds generally for defendant and against the plaintiff.

It is therefore ordered, adjudged and decreed that the valuation of \$700,000.00 of that part of the bridge and approach lying within Dakota County, Nebraska as fixed by the Board of Equalization of

17 Dakota County, Nebraska is a fair, reasonable and true value of that part of said bridge, and that the appeal from said Board of Equalization be dismissed, and the appellant pay the costs of said action taxed at \$—.

To all of which the appellant duly excepts and the appellant is given 40 days from the rising of this Court to prepare and serve the bill of exception.

GUY T. GRAVES,

*Judge of the District Court in and
for Dakota County, Nebraska.*

Notice of Appeal.

Filed Aug. 20, 1919.

In the District Court of Dakota County, Nebraska.

In the Matter of the Appeal of the SIOUX CITY BRIDGE COMPANY from the Order of the Board of Equalization of Dakota County Fixing Valuation of Its Property for Assessment Purposes, 1918.

Notice of Appeal.

Notice is hereby given that the Sioux City Bridge Company will appeal to the Supreme Court of Nebraska, from the order of the District Court of Dakota County entered on the 4th day of August, 1919, affirming the action of the Board of Equalization of Dakota County in fixing the value of the Sioux City Bridge Company's property in Dakota County for assessment purposes.
Dated this 19th day of August, 1919.

WYMER DRESSLER,
J. S. ROOT,
Attorneys for Sioux City Bridge Company.

Superdedit Bond.

Filed Aug. 20, 1919.

In the District Court of Dakota County, Nebraska.

In the Matter of the Appeal of the SIOUX CITY BRIDGE COMPANY from the Order of the Board of Equalization of Dakota County Fixing Valuation of Its Property for Assessment Purposes, 1918.

Superseded Bond.

Know all men by these presents:

That the Sioux City Bridge Company, a corporation, as principal, and National Surety Company, a corporation of the State of New York as surety, are held and firmly bound unto Dakota County, Nebraska, in the penal sum of Five Hundred and no/100 Dollars (\$500.00), for the payment whereof well and truly to be made unto the said Dakota County we bind ourselves jointly and severally firmly by these presents.

Yet upon the condition that Whereas on the 4th day of August, 1919, the District Court of Dakota County sitting as a Court of Equity entered an order finding that the assessment of Seven Hundred Thousand and no/100 Dollars (\$700,000.00), as the actual value of the Sioux City Bridge Company's property in Dakota County was reasonable and fair, and ordering that same be used as

the basis for assessing the property of said Company in said County; and to reverse said decision the Sioux City Bridge Company intends to appeal to the Supreme Court of Nebraska.

Now therefore, if the Sioux City Bridge Company shall prosecute its appeal to the Supreme Court of Nebraska according to law and pay the costs of said appeal if said judgment shall be affirmed by the Supreme Court of Nebraska, or otherwise proceed according to law, then this obligation to be void, otherwise to remain in full force and effect.

Dated this 19th day of August, A. D. 1919.

SIOUX CITY BRIDGE COMPANY,
By WYMER DRESSLER,
Its Attorney.

[Seal National Surety Company, New York, Incorporated 1891.]

NATIONAL SURETY COMPANY,
By WM. H. WHEELER,
Its Attorney-in-fact.

20 The foregoing bond and surety thereon are hereby approved this 20th day of Aug. A. D. 1919.

J. S. BACON,
*Clerk of the District Court,
Dakota County, Nebraska.*

STATE OF NEBRASKA,
Dakota County, ss:

I, J. Bacon, duly elected, qualified and acting County Clerk of Dakota County, Nebraska, and ex-officio Clerk of the District Court within and for Dakota County, Nebraska, do hereby certify that the foregoing transcript is a true and correct copy of the transcript of proceedings of the Board of Equalization of Dakota County, Nebraska, Notice of appeal, Appeal bond filed by the Sioux City Bridge Company for appeal from said Board of Equalization, Petition of Sioux City Bridge Company on appeal, Journal Entry, of the trial, decree of the Court, Notice of appeal and supersedeas bond for appeal to the Supreme Court, as said original documents are on file and of record in my office; [and that the bill of exceptions hereto attached is the original bill of exceptions filed in said cause, and further that answer on appeal at pages 9 and 19 of this transcript was taken from carbon copies in the County Attorney's office of said County, original instrument having been lost and I believe that said copy to be true and correct copy of the original answer.]*

In testimony whereof I have hereunto subscribed my name and affixed the seal of the District Court of Dakota County, Nebraska, this 10th day of September, A. D. 1919.

Done at Dakota City, Nebraska, on the date above mentioned.

[SEAL.]

J. S. BACON,
*Clerk of the District Court within and
for Dakota County, Nebraska.*

[*Matter enclosed in brackets erased in copy.]

Endorsed: 21252. Sioux City Bridge Co. v. Dakota County. Transcript. Supreme Court of Nebraska. Filed Sept. 22, 1919. H. C. Lindsay, Clerk.

21 And on the same day there was filed in the office of the Clerk of the Supreme Court, a certain Bill of Exceptions in the words and figures following, to wit:

22 In the District Court of Dakota County, Nebraska.

Case No. 2664. Doc. 11, No. 157.

In the Matter of the Appeal of the SIOUX CITY BRIDGE COMPANY from the Assessment of Its Property in Dakota County for Taxing Purposes.

Bill of Exceptions.

Before the Hon. Guy T. Graves, Judge.

Wm. S. Heller, Reporter.

Endorsed: State of Nebraska, Dakota County. Filed this day of September 15, 1919. J. S. Bacon, Clerk of District Court.

23 STATE OF NEBRASKA,
Dakota County, ss:

I, J. S. Bacon, the duly elected, qualified and acting Clerk of the District Court of Dakota County, Nebraska, hereby certify that the attached Bill of Exceptions is the original Bill of Exceptions filed in my office in the matter of the Appeal of the Sioux City Bridge Company from the assessment of its property in Dakota County, Nebraska for taxing purposes.

Dated this 15 day of September, A. D. 1919.

[SEAL.]

J. S. BACON,
*Clerk of the District Court,
Dakota County, Nebraska.*

24 Received from ——— for examination and amendment, a draft of a bill of exceptions in the case entitled, "In the matter of the appeal of the Sioux City Bridge Company, from the assessment of its property in Dakota County for taxing purposes," being Case No. 2664, tried in the District Court of Dakota County, Nebraska, at the regular November, 1918 Term.

Dated, Sept. 10, 1919.

GEO. W. LEAMER,
Attorney for Appellee.

We herewith return the draft of the bill of exceptions in the above entitled case, submitted to us on the — day of —, and propose not following amendments:

Dated Sept. 10, 1919.

GEO. W. LEAMER,
Attorney for Appellee.

25 It is hereby stipulated and agreed by and between the parties hereto, that the following transcript is a true and complete copy of all the evidence, oral and documentary, introduced on the trial of the within entitled cause, together with all the objections of counsel thereto rulings of the court on said objections and exceptions taken thereto.

Dated — —, —.

J. S. ROOT,
WYMER DRESSLER,
Attorneys for Appellant.
GEO. W. LEAMER,
Attorney for Respondent.

Dated, Sept. 10, 1919.

I hereby certify that the within record now contains all the evidence offered or given upon the trial of the within case by either party, together with all objections of counsel thereto, rulings of the court on said objections, and exceptions taken thereto, and on application of the — herein, this bill of exceptions is allowed by me, and ordered to be made a part of the record in this case.

GUY T. GRAVES,
Judge.

Dated, Sept. 15, 1919.

26

Dakota City, Neb., January 11, 1919.

I hereby certify that the following is a full and complete transcript of the original shorthand notes taken by me of the proceedings had during the trial of the within entitled action, and that all exhibits offered in evidence upon the trial are (either the originals or true copies) hereto attached in their proper place.

WM. S. HELLER,
*Official Reporter, Eighth Judicial
District, Dakota County, Nebraska.*

27 In the District Court of Dakota County, Nebraska.

Docket 11, #157. Case #2664.

In the Matter of the Appeal of the SIOUX CITY BRIDGE COMPANY from the Assessment of Its Property in Dakota County for Taxing Purposes.

Bill of Exceptions.

Before the Hon. Guy T. Graves, Judge.

Be it remembered, that at the November Term, A. D. 1918 of the District Court, held at Dakota City, Nebraska, within and for Dakota

County, Nebraska, to-wit, on the 19th day of December, 1918m before Honorable Guy T. Graves, Judge, the above entitled case was called for trial, and the following proceedings were had, viz:

Appearances:

Messrs. Wymer Dressler and Jesse L. Root, Attorneys for Sioux City Bridge Company, Appellant.

Mr. George W. Leamer, County Attorney of Dakota County, Attorney for Dakota County, Respondent.

28 J. P. ROCKWELL, called as a witness in behalf of the appellant, and after being first duly sworn testified as follows:

Direct examination.

By Mr. Wymer Dressler:

1 Q. State your name?

A. J. P. Rockwell.

2 Q. What official position to you hold, Mr. Rockwell?

A. I am the County Assessor within and for Dakota County, Nebraska.

3 Q. And how long have you held that position?

A. Two years.

4 Q. And as such county assessor you may state wheth-r or not you are a member of the Board of Equalization of Dakota County?

A. Yes, sir, I am a member of the Board of Equalization of this county.

5 Q. Were you present at the meeting of the Board of Equalization which considered the valuation of the Sioux City Bridge Company property?

A. Yes, sir.

6 Q. Who was present at that meeting?

A. Well, the three Commissioners were present, Mr. John Feller, A. Ira Davis, and Oliver W. Fisher, and Mr. George Wilking and myself.

7 Q. Those gentlemen constitute the Board of Equalization?

A. Yes, sir.

8 Q. Do you remember the proceedings concerning the valuation of the Sioux City Bridge Company property?

29 A. Yes, sir, I remember that there was proceedings had. I cannot just exactly give to you verbatim what took place there.

9 Q. You may state who if any one appeared as witnesses before that Board of Equalization on the question of the value of that bridge?

A. Well, I do not think that the Board of Equalization had any witnesses. They did arrive at their conclusion from what they knew of the bridge and what they knew of the value of the property.

10 Q. You did not subpoena any witnesses?

A. We did not subpoena any witnesses to take their evidence.

11 Q. There was no witnesses appeared before the board on the question of value, was there?

A. No. I do not think there was.

12 Q. Well, now, what information did the Board have before it as to the value of the bridge?

A. Well, now they had some information in regard to the length of the approach that had never been apparently looked into by the Board of Equalization in the valuation of that bridge, and I do not know if there was any—there was nobody sworn, or no evidence any more than what they knew from their own personal observation.

13 Q. And there was nothing before the Board to show the original cost of either the bridge or the approach, was there, Mr. Rockwell?

30 A. No, I do not think there was.

14 Q. There was no evidence before the Board as to the revenues derived from the bridge property, was there?

A. I do not think there was, although I am not sure whether Mr. Evans gave us any information on that or not.

15 Q. Who is Mr. Evans?

A. Mr. Ward R. Evans.

16 Q. Who is he?

A. He is the City Attorney of South Sioux City.

17 How old a man is he?

A. I do not know. He is of lawful age.

18 Q. About thirty years of age?

A. I presume so.

19 Q. His occupation is that of attorney?

A. Yes sir, that is what he is.

20 Q. How long has he lived in this community?

A. Well, I do not know.

21 Q. How long have you known him?

A. About nine years, eight or nine years.

22 Q. He is not an engineer—a civil engineer?

A. I should not think he was from the looks of him.

23 Q. Or a financier?

A. Yes, I should say that he was a pretty fair judge on finances.

24 Q. But you would not reagaed him as a man of experience in large financial matters, would you?

25 Mr. Leamer: Objected to by the respondent as being
31 immaterial.

The objection is overruled.

To which the respondent excepts.

A. Well, now, personally perhaps not, but he has had some information that he had gotten from some source or other way in this matter. I do not know how; but he had some information in regard to the valuation of both the bridges. Both of these bridges were under consideration at the same time by the Board of Equalization.

26 Q. Well, now, what specific data did he furnish concerning the Sioux City Bridge property?

A. I said I did not know whether he furnished any or not.

27 Q. As a matter of fact, Mr. Rockwell, you are under the impression that he did not, are you not?

A. No, I am under the impression that he did, but I would not swear positively that he did.

28 Q. You are unable to say what data he had?

A. No.

29 Q. Now you *say* state, how long did the consideration of the subject of the value of the Sioux City Bridge property consume before the Board?

A. Well, I am quite sure, I think that that thing was talked over by the Board at two or three different occasions, at the sitting when the finding was finally made there wasn't very long time consumed.

30 Q. At which sitting was it that any one appeared as a witness, Mr. Evans, for instance, to testify before the Board?

A. I do not think there was anybody appeared as a witness.

31 Q. Well, his testimony, or his statements, then were made not under oath, is that so?

A. No, we did not have any witnesses.

32 Q. Mr. Evans' appearance was simply in a voluntary capacity and merely a discussion?

A. I rather think so, yes sir.

33 Q. Now, you may state what if anything the Board had before it upon which it based the increase of \$100,000 to the value of the Sioux City Bridge property for assessment purposes?

34 Mr. Leamer: Objected to by the respondent as being immaterial, incompetent and irrelevant.

The objection is overruled.

To which the respondent excepts.

A. Well, if I am allowed to go into details, I had taken the pains to look that matter up a little myself after Mr. Miller or someone came to me to have the assessment lowered, and I found that the bridge was much longer, and there was more of it than I supposed. I did not have any idea what that bridge consisted of, and including the approach, I found that the approach run clear out to the Lake-ton, about two miles and a half, or something like that of approach, and several side tracks that are considered a part of the

33 approach. At least I was told that they were considered a part of the approach, and I was under the impression that that was the condition that perhaps the assessment was too low.

35 Q. Now, on that approach the assessment was raised according to the records from \$150,000 to \$200,000, that is true, is it not?

A. Well, now, I would not want to say on the approach, but on the bridge and the approach.

36 Q. The two items were separated, were they not by the Board?

A. Well, yes, I think they were, but I could not say just exactly what the different items were as to that separation.

37 Q. What if anything did the Board have before it with respect to any increase in the value of the bridge structure proper as against previous years?

A. They did not have any evidence.

38 Q. No evidence at all. The increase of \$50,000 on the bridge was made without any evidence at all?

A. Well—

39 Q. As far as any evidence went?

A. The only evidence we had was that property generally had increased in value since that assessment was made, some ten years before that, or some time before that at least, that other property had raised in value—other personal property and real estate, had all raised in value, and the bridge had remained still at the same

34 assessment—the same price that it had been assessed at in 1912, I think. I am not sure when the former assessment was made.

40 Q. You mean the surrounding farming community property had increased in value?

A. Yes, sir.

41 Q. Was any complaint of any kind filed by any one before the Board of Equalization that the assessment of the Sioux City Bridge Company property had been too low?

A. Nothing only what I said myself, that I thought it was too low under these existing circumstances.

42 Q. Was any statement—any written statement filed with the board, or submitted to the board by any one, including yourself on the subject of the previous valuation and the proposed raise?

A. I do not think there was.

43 Q. Have you had any experience as a railroad builder?

A. No sir.

44 Q. Nor as a bridge builder?

A. No, sir.

45 Q. Or as a railroad operator?

A. No, sir.

46 Q. And are you familiar with the other members of the Board of Equalization?

A. I think so.

47 Q. Had any of them had any such experience which I inquired of you regarding?

35 A. I do not think they had.

48 Q. And this Mr. Evans, whom you mention, has he had any such experience?

A. I do not think so.

49 Q. At least he did not disclose any of it to the Board?

A. Well, no, he did not say that he had had any experience.

50 Q. What is the fact as to the value placed by you as assessor upon farm lands in the county as compared to the market value of such lands?

51 Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial.

The objection is overruled.
To which the respondent excepts.

52 The Court: I will let in all of the evidence on both sides and consider it later.

A. The law provides that property shall be assessed at its real value, at its market value, and that property is valued by the precinct assessor at its real value, its actual value as far as to their ability to determine, and that is the basis on which the assessment is made on its actual value.

53 Q. Well, now, it is true, is it not, that as a matter of common knowledge, and as a fact, that farm lands are generally assessed in the county at only about fifty cents on the dollar?

36 54 Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial, and not the best evidence.

The objection is overruled.
To which the respondent excepts.

A. No, I do not think they are assessed at fifty per cent of their value.

55 Q. Have you ever made a study of that, Mr. Rockwell?

A. I have looked it up pretty well.

56 Q. Do you mean to say, Mr. Rockwell, that a farm that is worth \$200.00 an acre is assessed at \$200 an acre for taxing purposes?

A. Well, now, here is the proposition in that respect. A farm that is worth \$200.00 an acre would be assessed at \$200.00 an acre.

57 Q. It should be?

A. But here is the proposition is assessing real estate, its location to the market, its actual value if put upon the market according to the judgment of the assessor. You may own a quarter section of land out here that you value at \$300.00 an acre. A willing bidder and a Willing seller would establish the price of that land. You might own a piece of land that adjoins Mr. Leamer, and that Mr. Leamer would want it for some particular purpose, and he would give you more than that land is worth. That is not the true value. It is what the land generally is worth in the community that fixes

37 the price that the assessor goes by in arranging the valuation of that land. For instance. There is land that has been sold in this precinct, the sale value of that land according to the record it sold for \$150 an acre. The assessed value was \$70 or \$80 an acre. Now, we say there is an instance where it is only assessed at fifty per cent of its actual value, but understand that the assessor in assessing that land takes into consideration things that make the value of that land. For instance, it is liable to be damaged by the Missouri river. I know one piece of land in particular that was sold for \$100.00 an acre and assessed at \$50. Now that sale did not

represent the real value of that land, because the land was sold by Mr. Muhall to some fellow that did not know the Missouri river. The assessor that fixed the value of that land did know the Missouri river, and in six months after this sale was made the land that at that time amounted to about 160 acres was cut down to less than ten acres by the action of the Missouri river. The assessor took that into consideration. The man who bought it did not know the conditions, and he of course lost the money he had in it.

58 Q. That situation could only apply on land adjacent to the river?

A. Yes, sir, or near the river.

59 Q. Am I correct then in understanding that the practice of the assessors is to arrive at their own valuation of the land

38 irrespective of the sales and elements of that kind?

A. Yes, sir.

60 Q. And the assessor's books show accurately the valuation fixed for taxing purposes?

A. Yes, sir.

Cross-examination.

Questions by Mr. George W. Leamer:

61 Q. You as County Assessor have the custody of the assessment schedule returned by the Sioux City Bridge Company?

A. Yes, sir.

62 Q. I will ask you to produce that schedule for this year?

(Witness producing schedule marked Exhibit 13.)

A. This is the schedule that they refused to sign for this year.

63 Q. This schedule entitled, Sioux City Bridge Company across the—

64 Mr. Dressler: I do not think this is proper cross-examination. They should not be permitted to make their case at this time.

65 Mr. Leamer: I was leading up to the Board of Equalization hearing in this matter.

66 The Court: You may proceed.

To which the appellant excepts.

39 67 Q. The schedule entitled, assessment of personal property for the year 1918 of Sioux City Bridge Company, and marked Exhibit 13, is that the schedule that the Sioux City Bridge Company returned to you?

(Showing the Witness Exhibit 13.)

A. Yes, Sir, that is the schedule.

68 Q. I will ask you this question, did the Sioux City Bridge Company return to you a list of all its property?

A. Well, no, the Sioux City Bridge Company returned the schedule that was prepared as a list of their property, and they refused to

sign that schedule and this is what they returned. (Pointing to Exhibit 13.)

69 Q. You mean Exhibit 13 is what they returned?

A. Exhibit 13 is what they returned.

70 Q. And refused to sign?

A. Yes, sir.

71 Q. Have they ever made out a list of property and sent it to you?

A. No, sir.

72 Q. Or have they ever made out a list of property on the Sioux City Bridge in Dakota County, Nebraska for assessment purposes in 1918?

A. Not for 1918, no.

73 Q. Mr. Rockwell, you were present when the Board of Equalization met at each one of their sessions?

A. Yes, sir.

74 Q. Mr. Miller appeared for the Chicago, St. Paul, Minneapolis & Omaha Railway Company?

40 A. He appeared for the Bridge I think.

75 Q. For the Bridge Company?

A. Yes, sir.

76 Q. The Sioux City Bridge Company?

A. Yes, sir.

77 Q. What complaint did he make before the Board of Equalization at that time?

A. Well, his contention was that the bridge was assessed too high and he asked that it be reduced \$100,000, if I remember correctly from what it had been assessed at for the years previous to that.

78 Q. He was before the Board of Equalization on two or three different dates?

A. Yes, sir.

79 Q. And he presented to the Board figures?

A. Yes, sir.

80 Q. And facts?

A. Yes, sir.

81 Q. From his memoranda?

A. Yes, sir, he had a memorandum.

82 Q. Mr. Ward R. Evans, the City Attorney of South City, also appeared before the Board?

A. Yes, sir.

83 Q. And there was a sort of an informal hearing there, was there not?

A. Yes, sir, there was. There was two or three attorneys was talking to the Board.

41 84 Q. You have viewed this bridge have you not, on several occasions for the purpose of determining its value?

A. Well, I will tell you, yes, I have been down there to the bridge and I looked over the approaches.

85 Q. You have gone over the approaches?

A. Yes, sir, as near as I could, I do not know exactly where—where the tracks are of these approaches, but I was told they were

out there by Laketon, and that the sidetracks all belonged to the approaches. I did not know that until this controversy came up last spring.

86 Q. At the Board of Equalization, and in discussing this, you told the Board?

A. I told them what I knew about it.

87 Q. You told them what you knew about it?

A. Yes sir.

Redirect examination.

Questions by Mr. Wymer Dressler:

88 Q. Mr Rockwell, with reference to the schedule of property returned by the Sioux City Bridge Company for a number of years, am I correct in understanding that the practice has been for the county assessor to fix up the schedule of said property at an aggregate of \$600,000. and then to mail it to the officers of the bridge Company for signature?

A. Yes, sir, that has been the practice.

89 Q. That has been the practice?

42 A. Yes, sir.

90 Q. And this year the assessor fixed up the schedule at \$700,000.00 and mailed it to the officials of the Bridge Company for signature, and they refused to sign?

A. No, he did not fix it up at \$700,000.

91 Q. He fixed it up at the usual figure?

A. At the usual figures.

92 Q. And did they sign that or not?

A. No, sir they did not.

93 Q. They refused to sign it?

A. Yes Sir

94 Q. As they had done in years past?

A. Well of course—yes, sir I think so.

95 The Court: Did you mean that they had refused in the years past to sign it?

A. No, they always signed it.

96 Q. They had always signed it in years past?

A. Yes, sir.

97 Q. But this year they refused?

A. This year they refused to sign.

98 Q. And they appeared before the Board of Equalization and asked to have the valuation reduced this year, did they not?

A. Yes, sir.

99 Q. On the ground that it had been in previous years placed too high?

43 A. Yes, sir.

100 Q. And Exhibit 13, which Mr. Leamer called your attention to, is the schedule of property which the Sioux City Bridge Company refused to sign this year?

A. Yes, sir.

101 Q. Now you spoke of viewing the bridge and approaches. You may state whether or not you had any knowledge, or have any now, of the cost of materials, either originally, or at the present time, of the bridge or the approaches?

A. No.

102 Q. Did you have any knowledge of the cost of the work and labor involved in either structure?

A. No, sir, Not of my own knowledge.

103 Q. And no member of the board of equalization had any such information, as far as you know?

A. As far as I know.

104 Q. There was no such information expressed by anyone before the Board of Equalization that took this action was there?

A. Why I do not know what might have been expressed in some of the talk that came up, I am sure.

105 Q. There was no evidence offered by witnesses?

A. There was never—

106 Q. As to any of the details of the cost of materials or labor involved in the structures?

A. No.

44 Recross-examination.

Questions by Mr. George W. Leamer:

107 Q. Do you remember of Mr. Phillips of South Sioux City being also before the Board of Equalization?

A. Yes, sir.

108 Q. Objecting to the valuation of the Nebraska end of the Sioux Bridge Company?

A. I was under the impression that he was on the Combination Bridge.

109 Q. But both?

A. Or probably both. I am not sure. I know that he was here, and both bridges were up for discussion at nearly the same time. I would not be positive but he very likely did object to the valuation of the Sioux City Bridge Company.

110 Q. And he asked to have it raised?

A. Well, yes. He was asking for a raise of the bridges, and also at the same time the surface company's property. In fact all of that corporation property in South Sioux City.

111 Q. As I understand you, in previous years the Sioux City Bridge Company had always returned a schedule signed placing the value at \$600,000?

A. Yes, sir.

112 Q. And this year they did not sign it, and they have not returned to you any list of their property?

A. No, sir, they never returned any other list, and they did not sign that schedule.

45

Redirect examination.

Questions by Mr. Wymer Dressler:

113 Q. And you knew what the property was: you knew it was this bridge and the approach?

A. Yes, sir.

114 Q. You have known that for a great many years?

A. I noticed when I came into the assessor's office that was the record.

115 Q. You have no reason to suppose that they have any other property within Dakota County except the bridge and the approach?

A. I do not know what they have.

116 Q. You do not think they have do you?

A. No, I do not suppose they have.

117 Q. You know as a matter of fact they do not have, don't you?

A. I do not know what they have, No.

118 Q. This is for the record. You may state whether or not they have any other property in Dakota County aside from the bridge and the approach?

A. Not to my knowledge.

119 Q. That is your official knowledge?

A. Yes Sir.

120 Q. What was the name of the South Sioux City gentleman you spoke of?

A. Phillips.

46 121 Q. What is his first name?

A. J. L. Phillips.

122 Q. What is his business?

A. He is a preacher.

123 Q. He is a preacher?

A. I do not know what else he does.

124 Q. You mean a minister of the gospel?

A. Yes, sir.

125 Q. How old a man is he?

A. I should say that he was over fifty years of age.

126 Q. Did he assume to, or did he exhibit any technical knowledge of bridge values or railroad values before the Board of Equalization?

A. No, I do not think he did.

127 Q. It is true, is it, that his only suggestion was simply that the valuation ought to be raised?

A. Yes, sir.

128 Q. And that was a general statement he had to make?

A. Yes, sir.

Witness excused.

129. It being 12 o'clock the court took a recess to one o'clock p. m., same day, Thursday, December 19, 1918, after which time,

all parties being present, as before, the following proceedings were had, viz:—

47 130 Mr. Dressler: The appellant now offers in evidence the depositions of John D. Caldwell and L. A. Robinson, and now reads the same in the record, as follows:

STATE OF NEBRASKA,
County of Dakota, ss:

In District Court of Dakota County, Nebraska.

In the Matter of the Appeal of the SIOUX CITY BRIDGE COMPANY from the Assessment of Its Property in Dakota County for Taxing Purposes.

Notice to take Depositions.

131 The above named plaintiff will take notice that on Tuesday November 26, 1918, the said defendant will take the depositions of John D. Caldwell and L. A. Robinson, sundry witnesses to be used as evidence on the trial of the above cause before competent authority at the office of the Secretary of the C. & N. W. Ry. Co., 226 West Jackson Blvd., Chicago, Cook County Illinois at 10 o'clock A. M. with authority to adjourn from day to day until all such depositions have been taken, it being agreed that the signature- of the witnesses are hereby waived.

WYMER DRESSLER,
Atty. for Appellant.

Received copy of the above notice this 22d day of November A. D. 1918. Geo. W. Leamer, County Attorney, Dakota County Nebraska.

132 Depositions of John D. Caldwell and L. A. Robinson, taken before me, William J. Mitchell, a Notary Public in and for Cook County, State of Illinois, on the 26th day of November, in the year 1918, between the hours of 10.00 A. M. and 4.00 P. M., at the office of the Secretary of the C. & N. W. Ry. Co., 226 West Jackson Boulevard, in the city of Chicago, in said county, pursuant to the annexed notice, to be read in evidence in behalf of the appellant, in an action pending in the District Court of Dakota County, Nebraska, in which Sioux City Bridge Company is appellant, and the County of Dakota, Nebraska, is respondent.

Appearances:

Wymer Dressler, on behalf of the appellant.
Geo. W. Leamer, County Attorney, on behalf of Dakota County, Nebraska.

JOHN D. CALDWELL, of lawful age, being by me first duly examined, cautioned and solemnly sworn as hereinafter certified, depose and sayeth *ad follows*, viz:

Direct examination.

By Mr. Wymer Dressler:

133 Q. Mr. Caldwell, what is your occupation?

A. Secretary of the Sioux City Bridge Company.

134 Q. How old are you?

A. Fifty-six.

135 Q. You live in Chicago?

A. I do.

136 Q. Is the Sioux City Bridge Company you have mentioned the Sioux City Bridge Company incorporated under the laws of Iowa?

A. It is.

137 Q. Approximately when was that corporation organized?

A. Incorporated November 20, 1872, under general laws of Iowa; organized January 1, 1873, amended articles adopted and approved by stockholders July 27, 1887.

138 Q. Is the Sioux City Bridge Company the corporation which owns the railroad bridge at Sioux City which is known as the Sioux City Bridge?

A. It is.

49 139 Q. And is that the bridge which is now being used by the Chicago, St. Paul, Minneapolis & Omaha Railway Company and the Chicago, Burlington & Quincy Railroad?

A. It is.

140 Q. As secretary of that corporation for you have charge of the records of the company?

A. I do.

141 Q. Can you state from your records the amount of paid up capital stock of the company?

A. \$945,800.00.

142 Q. How many shares?

A. 9,458.

143 Q. Of the par value of what?

A. \$100.00 each.

144 Q. Are there any bonds of the corporation outstanding?

A. There are none.

145 Q. When was that bridge constructed?

A. In 1888.

146 Q. Are you familiar with the methods of procuring the revenue from the operation of that bridge from the time of its construction up to the present time, in a general way?

A. I am.

147 Q. What was the first method employed?

A. The first method employed was by tariff or toll sheet.

148 Q. And has some different method been adopted and in use at the present time?

A. Yes.

50 149 Q. What is that method?

A. Since 1907 leases have been in force between the Sioux City Bridge Company and the Chicago, St. Paul, Minneapolis & Omaha Railway Company and the Chicago, Burlington & Quincy Railway Company.

150 Q. And those are rental leases, are they?

A. Leases under which rental is paid.

151 Q. Does the Sioux City Bridge afford to the Sioux City Bridge Company, a corporation, any other revenue than is provided in those rental contracts? Is that the only source of revenue?

A. That is.

152 Q. These rental contracts that you have mentioned cover the use of the bridge approaches, too, do they?

A. They do.

153 Mr. Dressler: I will ask that these documents be marked for identification appellants' exhibits 1, 2, 3 & 4 respectively.

154 Q. Are these rental contracts you have mentioned between the Burlington Company and the Bridge Company and between the Bridge Company and the C., St. P., M. & O. Railroad on file in your office, as secretary?

A. They are.

155 Q. And are they permanent records of your office?

A. They are.

156 Q. Now, handing you four papers marked appellants' exhibits, 1, 2, 3, & 4 respectively, you may state what they are?

51 A. Exhibit 1 is an agreement dated September 20, 1907, between the Sioux City Bridge Company and the Chicago, Burlington & Quincy Railroad Company for the use of the bridge.

157 Exhibit No. 2 is an agreement dated June 28, 1910, between the Sioux City Bridge Company and the Chicago Burlington & Quincy Railroad Company extending the agreement of September 20, 1907 for three years.

158 Exhibit No. 3 is an agreement dated September 30, 1913, between the Sioux City Bridge Company and the Chicago, Burlington & Quincy Railroad Company extending the agreement of September 20, 1907 for three years.

159 Exhibit No. 4 is an agreement dated September 30th, 1916 between the Sioux City Bridge Company and the Chicago, Burlington & Quincy Railroad Company extending the agreement of September 20, 1907 for three years.

160 Q. Are Exhibits 1 to 4 as you have described them the rental contracts under which the Burlington Company uses the Sioux City bridge and has used it since September 20, 1907, up to the present time?

A. They are.

161 Mr. Dressler: I will ask that these documents be marked for identification appellants' Exhibits 5, 6, 7 & 8 respectively.

(They are so marked.)

162 Q. Handing you appellant's exhibits 5, 6, 7 & 8, you may state what they are?

52 A. Exhibit 5 is an agreement dated November 1, 1907, between the Sioux City Bridge Company and the Chicago, St. Paul, Minneapolis & Omaha Railway Company for the use of the bridge.

163 Exhibit No. 6 is an agreement dated June 28, 1910, between the Sioux City Bridge Company and the Chicago St. Paul Minneapolis & Omaha Railway Company for the use of the bridge.

164 Exhibit No. 7 is an agreement dated the 23d of October, 1913, between the Sioux City Bridge Company and the Chicago St. Paul Minneapolis & Omaha Railway Company extending the terms of the agreement of June 28, 1910, which is Exhibit 6 for three years.

165 Exhibit No. 8 is an agreement dated August 31, 1916, between the Sioux City Bridge Company and the Chicago St. Paul Minneapolis & Omaha Railway Company, extending the agreement of June 28, 1910, Exhibit 6 for a period of three years.

166 Q. You may state whether or not Exhibits 5, 6, 7 and 8 constitute the rental contracts under which the Chicago St. Paul Minneapolis & Omaha Railway Company uses the Sioux City Bridge and has used it since 1907 up to the present time?

A. They are.

167 Q. And are the original contracts of which Exhibits 5, 6, 7 and 8 are certified copies on file in your office?

A. They are.

168 Q. And are they a part of the permanent records of your office?

53 A. They are.

169 Mr. Dressler: It is hereby stipulated and agreed between the parties hereto that Exhibits 1 to 8, both inclusive, may be received in evidence with the same force and effect as though the originals thereof had been offered, and appellant now offers said Exhibits 1 to 8, both inclusive, in evidence, offering each separately, and asks that a correct copy *therefore* be substituted for the original.

170 Exhibits 1 to 8, both inclusive, are received in evidence, there being no objection, and are considered read, and true and correct copies thereof here follow:

Exhibits 1 to 8.

54

EXHIBIT 1.

171 Memorandum of agreement, made and entered into this twentieth day of September, A. D. 1907, by and between the Sioux City Bridge Company, a corporation created and organized under and pursuant to the laws of the State of — as party of the first part, and the Chicago, Burlington & Quincy Railroad Company, a corporation created and organized under and pursuant to the laws of the State of Illinois, as party of the second part, as follows:

Whereas, the said party of the first part owns and maintains a railroad bridge over and across the Missouri river at or near the City

of Sioux City, in the state of Iowa, with the approaches thereto, and said party of the second part is the owner and lessee of and operates lines of railroad which reach, (or which it is proposed to produce) to the said bridge or its approaches, and is also the owner or lessee of the locomotives, cars and other equipment used upon and in connection with said lines, and wishes to obtain the right to pass said locomotives, trains and cars over said bridge and its approaches for a term of three (3) years from and after the first day of October, 1907; and the first party consents and agrees to concede and grant to said second party that right upon the terms and for the considerations below expressed;

Now therefore, in consideration of the premises, and of the rentals to be paid by the said party of the second part, and of the
55 covenants herein contained, the said parties have covenanted, promised and agreed, and hereby covenant, promise and agree, each to and with the other as follows:

I.

That the said party of the first part has leased and let, and hereby does lease and let, to the said party of the second part, the right to run and operate its (said second party's) said locomotives, trains and cars upon and over the said bridge and its approaches, as and in the condition in which the said bridges and approaches now are, for the term of three (3) years, commencing on the first day of October, 1907, and ending on the 30th day of September, 1910. Provided always and it is hereby covenanted and agreed by the said party of the second part, that it will not place or cause to be placed upon said bridge any load, weight or strain in excess of that allowed by the chief engineer of the party of the first part, during the life of this lease.

II.

The said party of the second part has covenanted, promised and agreed, and hereby does covenant, promise and agree to pay to the said party of the first part, for the said right: (a) three per centum (3%) interest per annum on one million twenty-two thousand, three hundred fifty-five and 28/100 Dollars (\$1,022,355.28), that being
56 for the purpose of this contract, agreed upon as the cost of said bridge and its approaches; to be paid in equal monthly installments; (b), such a proportion of the expense of operating and maintaining said bridge and of the depreciation thereon (which depreciation is, for the purpose of this contract, fixed at ten thousand dollars (\$10,000.00 per annum), during the life of this lease, as the number of wheels run by said party of the second part over said bridge bears to the whole number of wheels run over the same; to be paid quarter-yearly. Provided, that the sums so payable under this subdivision ("(b)") shall in any event at least equal twenty-five per centum (25%) of the whole expense of operation, maintenance and depreciation; (c), one-half of all the

taxes assessed against that property or paid by said party of the first part each year during the life of this lease.

Provided that if the right to use said leased property is granted by said party of the first part or any other lessee during the life of [the first part to any other lessee]* this lease, the said party of the second part shall therefore only be bound to pay such a proportion of the taxes aforesaid as one (1) bears to the whole number of persons or companies using said leased property.

Provided further, that the said party of the second part shall in no case be required to pay rental for the right hereby granted in excess of the rental to be paid by any other lessee of said party of the first part during the life of this lease.

III.

It is further covenanted and agreed that said bridge shall
57 be operated and maintained by the Chicago, St. Paul, Minneapolis and Omaha Railway Company, pursuant to the arrangement at this time, or any other arrangement to be hereafter entered into between said company and the said party of the first part for that purpose; and in case the said Chicago, St. Paul, Minneapolis & Omaha Railway Company fails or refuses to operate said bridge, the said party of the first part shall operate and maintain the same.

IV.

The said party of the second part shall, at its own cost, connect its track with the track of the party of the first part, but only at such point as shall be agreed upon by the parties hereto.

V.

That each of said parties shall keep a true account of the number of wheels run over said leased property during each month this agreement shall continue in force and at the end of each of said months each party will deliver to the other a true statement, in writing, of the number of wheels so run by it during the preceding month.

VI.

The movement of locomotives, trains or cars of the party of the second part upon said leased property shall be under the immediate direction of the superintendent or other designated officer of the operating company; all rules and regulations for the movement of such locomotives, trains or cars shall be reasonably brought
58 to the notice of the said party of the second part and shall be reasonable and just, without unfair preference or discrimination in favor of said party of the first part or any of its lessees;

[*Words enclosed in brackets erased in copy.]

passenger and freight trains of the said Chicago, St. Paul, Minneapolis and Omaha Railway Company shall have preference over similar trains of said party of the second part, but passenger trains of said party of the second part, shall have preference over freight trains of said Chicago, St. Paul, Minneapolis and Omaha Railway Company.

VII.

If the use of said bridge and its approaches shall at any time be interrupted or traffic thereon be delayed by any cause which would not have been reasonably foreseen or provided against, and if in such case the use thereof shall be fully restored with all reasonable diligence, then and in that case the party of the second part shall not have any claim against the party of the first part, or its successors or assigns, for loss or damage of any kind caused by or resulting from such interruption or delay; and the party of the second part shall not in such case be entitled to any abatement of rental; in case the party of the first part shall fail to repair any such defect in said bridge or approaches, within a reasonable time after the party of the second part shall have given to the party of the first part written

notice specifying the defect and requesting it to be repaired,
59 then the party of the first part shall be responsible for and pay all damages arising therefrom; provided always, that it is understood and expressly agreed that the party of the first part shall not be held or required to repair or correct, or liable for the existence or consequences of defects, if any, in said bridge or its approaches at the date of this contract.

VIII.

In all cases of injury, loss or damage occurring in the use of said bridge and approaches, each company using the same shall bear and pay all loss or damage to its own property or employes, or to persons to property in its charge, caused by any defects in said bridge or approaches, from whatever cause arising and for any loss or damage resulting from any other cause than defects in said bridge or its approaches, each party shall bear and pay all loss and damage to its own property or employes or to persons or property in its charge or to third persons or their property caused by the negligence or fault of its sole employes; and if, (except for defects in said bridge and its approached, as aforesaid), accidents occur though the negligence of employes of both parties, each party shall bear its own loss, including claims for injuries to its employes and persons and property in its custody.

In witness whereof the parties hereto have caused these presents to be executed by their proper officers respectively, the day and year first above written.

60 [SEAL.]

SIoux CITY BRIDGE COMPANY,
By MARVIN HUGHITT, *President*.

Attest:

J. B. REDFIELD,
Secretary.

Approved as to form:
T. W.

[SEAL.]

CHICAGO, BURLINGTON AND
QUINCY RAILROAD COMPANY,
By DANIEL WILARD.

Attest:
H. W. WEISS,
Asst. Secretary.

Approved as to form:
C. M. DAWES.

Endorsed: Contracts, Book 25, page 242.

61

EXHIBIT 2.

172. This Agreement made and entered into this 28th day of June, A. D. 1910, by and between the Sioux City Bridge Company, a corporation party of the first part, and the Chicago, Burlington and Quincy Railroad Company, a corporation party of the second part:

Witnesseth: That whereas, by an agreement dated September 20th, 1907, the party of the first part leased to the party of the second part hereto the right to run and operate its locomotives, trains and cars upon and over the bridge and approaches of the party of the first part at or near Sioux City Iowa, for the term of three years, commencing on the 1st day of October, 1907, and ending on the 30th day of September, 1910, and

Whereas, the parties hereto desire that the said agreement of September 20th, 1907, with all its terms and conditions, shall be extended for a further period of three years, from and after said 30th day of September, 1910;

Now therefore, in consideration of the premises and of the sum of one Dollar paid by the party of the second part to the party of the first part, the receipt whereof is hereby confessed and acknowledged, the parties hereto do hereby covenant and agree with each other that the term of said lease dated September 20th, 1907, shall be and the same is hereby extended for a period of three years, commencing on the 1st day of October, 1910, and ending on the 30th day of September, 1913:

62 It is further covenanted and agreed between the parties hereto that this extension of said lease dated September 20th, 1907, is made upon and subject to all the terms, stipulations, covenants, agreements, provisions and conditions in said contract of lease of September 20th, 1907, contained, and that each of said terms, stipulations, covenants, agreements, provisions and conditions shall have the same force and effect during this extended term of said lease as though the same were herein set — in full.

In Witness Whereof the parties hereto have caused this agreement to be executed the day and year first above written.

[SEAL.]

SIOUX CITY BRIDGE COMPANY,
By MARVIN HUGHITT, *President.*

Attest:

JOHN D. CALDWELL,
Secretary.

[SEAL.]

CHICAGO, BURLINGTON AND QUINCY
RAILROAD COMPANY,
By D. MILLER, *President.*

Attest:

H. W. WEISS,
Asst. Secretary.

Endorsed: Contracts, Book 29 page 525.

63

EXHIBIT 3.

173. This Agreement made this 30th day of September, 1913, between Sioux City Bridge Company and Chicago, Burlington & Quincy Railroad Company, second party:

Witnesseth: That Whereas by an agreement dated September 20, 1907, the said party of the first part leased to the said second party hereto the right to run and operate its locomotives, trains and cars upon and over the bridge and approaches of the first party at or near Sioux City, Iowa, for the term of three (3) years, commencing the first day of October, 1907, and ending on the 30th day of September, 1910; and

Whereas by an agreement between the parties, dated June 28, 1910, the term of said agreement was extended for a period of three (3) years from and after the 30th day of September, 1910, and

Whereas, it is mutually desired to further extend the term of said agreement.

Now therefore, in consideration of the premises, it is hereby mutually agreed that the term of said agreement of September 20, 1907, be and the same hereby is extended for a further period of three (3) years from and after the 30th day of September, 1913, subject to all the terms, stipulations, covenants and agreements, provisions and conditions in said lease of September 20, 1907, contained.

In Witness Whereof, the parties hereto have caused this agreement to be executed the day and year first above written.

64 [SEAL.]

SIoux CITY BRIDGE COMPANY,
By W. A. GARDNER,
Vice President.

Attest:

JOHN D. CALDWELL,
Secretary.

[SEAL.]

CHICAGO, BURLINGTON AND QUINCY
RAILROAD COMPANY,
By D. MILLER, *President.*

Attest:

H. E. JARVIS,
Asst. Secretary.

Approved as to form:

WILLIAM G. WHEELER,
Assistant General Counsel.

Form approved:

C. M. DAWES.

Endorsed: Contracts Nook 26 page 540.

65

EXHIBIT 4.

174. This Agreement made and entered into this thirtieth day of September, 1916, by and between the Sioux City Bridge Company, a corporation hereinafter called the first party and the Chicago, Burlington and Quincy Railroad Company, a corporation herein-after called the second party:

Witnesseth: Whereas, a certain agreement between the parties hereto of dates September 20, 1907, as contained in effect by agreements supplementary thereto of date June 28th, 1910, and September 30, 1913, under which the first party leased to the second party the right to run and operate its locomotives, trains and cars upon and over the bridge and approaches of the first party at or near Sioux City Iowa, has expired by limitation of time, and

Whereas, it is mutually desired by the parties hereto to further extend the terms of said agreement.

Now Therefore, in consideration of the premises, it is hereby mutually agreed by and between the parties hereto that the term of said agreement of September 20, 1907, *be*m and the same hereby is, extended for a further period of three (3) years from and after the thirtieth day of September, 1916, subject to all the terms, stipulations, covenants and agreements, provisions and conditions in said agreement of September 20, 1907, contained.

In Witness Whereof, the parties hereto have caused this agreement to be executed in duplicate, as of the day and year first above written.

66 [SEAL.]

SIOUX CITY BRIDGE COMPANY,
By M. HUGHITT,
President.

Attest:

JOHN D. CALDWELL,
Secretary.

[SEAL.]

CHICAGO, BURLINGTON AND QUINCY
RAILROAD COMPANY,
By HALE HOLDEN,
President.

Attest:

H. E. JARVIS,
Assistant Secretary.

67

EXHIBIT 5.

175. Memorandum of Agreement, made and entered into this first day of November, A. D. 1907, by and between the Sioux City Bridge Company, a corporation created and organized under and pursuant to the laws of the state of Iowa, as the party of the first part, and the Chicago, St. Paul, Minneapolis & Omaha Railway Company, a corporation created and organized under and pursuant to the laws of the state of Wisconsin, as party of the second part, as follows:

Whereas, the party of the first part owns and maintains a railroad bridge over and across the Missouri river at or near the city of Sioux City, in the state of Iowa, with approaches and tracks connecting thereto, and said party of the second part is the owner and lessee of and operated lines of railroad which connect with said tracks and bridge approaches, and is also the owner or lessee of locomotives, cars and other equipment used upon and in connection with said lines, and wishes to obtain the right to pass said locomotives, trains and cars over said bridge, its tracks and approaches, for a term of three (3) years from and after the first day of November, 1907, and the first party consents and agrees to concede and grant to said second party that right upon the terms and for the considerations below expressed,

Now Therefore, in consideration of the premises and of the rentals to be paid by the said party of the second part and of the covenants herein contained, the said parties have covenanted, 68 promised and agreed and hereby covenant, promise and agree, each to and with the other, as follows:

I.

That the said party of the first part has leased and let, and hereby does lease and let, to the said party of the second part the right to run and operate its (said second party's) locomotives, trains and cars upon and over the said bridge, its tracks, and approaches, as and in the condition in which said bridge tracks and approaches now are, for the term of three (3) years, commencing on the first day of November, 1907, and ending on the thirtieth day of October, 1910. Provided, always, that if either party to this lease shall serve a notice in writing upon the other party hereto that it desires to be relieved from and to terminate this lease, this lease and all rights thereunder shall cease and terminate, Ninety (90) days from and after the service of such notice. It is hereby further covenanted and agreed by the said party of the second part, that it will not place or cause to be placed upon said bridge, any load, weight or strain in excess of that allowed by the Chief Engineer of the Operating Company during the life of this lease.

II.

The said party of the second part has covenanted, promised and agreed and hereby does covenant, promise and agree, to pay
69 to the said party of the first part for the said right the following sums of money:

Rental, fifty one thousand one hundred seventeen and 76/100 dollars (\$51,117.76) per annum.

Seventy five per cent (75) of all taxes assessed against the property, or paid by the said party of the first part each year during the life of this lease.

Seventy five per cent (75%) of all expenses of operating the said bridge, its approaches and tracks.

Seventy five per cent (75%) of a sum of ten thousand dollars (\$10,000.00) annually, which sum is to be set aside as covering the depreciation of said bridge, its tracks and approaches.

All of the above is to be paid to the treasurer of the said first party in equal monthly installments.

III.

It is further covenanted and agreed that the said bridge, its tracks and approaches, shall be operated and maintained by the party of the second part, pursuant to an arrangement at this time existing, or any other arrangement to be hereafter entered into between said company and the said party of the first part for that purpose; and in case the said party of the second part fails or refuses to operate said bridge, then the first party shall operate and maintain said bridge, tracks and approaches.

IV.

In all cases of injury, loss or damage occurring in the use
70 of said bridge, tracks and approaches, each party hereto shall bear and pay all loss or damage to its own property or employees, or to persons or property in its charge, caused by any defects in said bridge or approaches, from whatever cause arising; or for any loss or damage resulting from any other cause than defects in said bridge, its tracks or its approaches, as aforesaid, each party shall bear and pay all loss and damage to its own property or employees, or to persons or property in its charge, or to third persons or their property, caused by the negligence or fault of its sole employees; and if (except for defects in said bridge, tracks and approaches as aforesaid) accidents occur through the negligence of employees of both parties, each party shall bear its own loss, including injury to its employees and persons and property in its custody.

In witness whereof, each of the parties hereto has caused these presents to be executed by its President and attested by its Secretary, the day and year above written.

[SEAL.]

SIOUX CITY BRIDGE COMPANY,
By M. HUGHITT,

Its President.

Attest:

J. B. REDFIELD,
Its Secretary.

[SEAL.]

CHICAGO, ST. PAUL, MINNEAPOLIS
AND OMAHA RAILWAY COMPANY,
By W. A. GARDNER,
Its President.

Attest:

T. A. POLLEYS,
Its Secretary.

Endorsed: Book 25, page 369.

71

EXHIBIT 6.

176. Memorandum of Agreement, made and entered into this 28th day of June, A. D. 1910, by and between the Sioux City Bridge Company, a corporation created and organized under and pursuant to the laws of the State of Iowa, as the party of the first part, and the Chicago, St. Paul Minneapolis and Omaha Railway Company, a corporation created and organized under and pursuant to the laws of the state of Wisconsin, as party of the second part, as follows:

Whereas, the party of the first part owns and maintains a railroad bridge over and across the Missouri river at or near the city of Sioux City, in the state of Iowa, with approaches and tracks connecting thereto, and said party of the second part is the owner and lessee of and operates lines of railroad which connect with said tracks and bridge approaches, and is also the owner or lessee of locomotives, cars and other equipment used upon and in connection with said lines, and wishes to obtain the right to pass said locomotives, trains and cars over said bridge, its tracks and approaches, for a term of three (3) years from and after the thirty-first day of October, 1910, and the first party consents and agrees to concede and grant to said second party that right upon the terms and for the considerations below expressed:

Now Therefore, in Consideration of the premises and of the rentals to be paid by the said party of the second part, and of the covenants herein contained, the said parties have covenanted, promised and agreed, and hereby covenant, promise and agree, each to and with the other, as follows:

72

I.

That the said party of the first part has leased and let, and hereby does lease and let, to the said party of the second part the right to run and operate its (said second party's) locomotives, trains and cars upon and over the said bridge, its tracks and approaches, as and in the condition in which said bridge, tracks and approaches now are, for the term of three (3) years, commencing on the first day of November, 1910, and ending on the thirty-first day of October, 1913.

Provided always, that if either party to this lease shall serve a notice in writing upon the other party hereto that it desires to be relieved from and to terminate this lease, this lease and all rights thereunder shall cease and terminate, ninety (90) days from and after the service of such notice, It is hereby further covenanted and agreed by the said party of the second part, that it will not place or cause to be placed upon said bridge, any load, weight or strain in excess of that allowed by the Chief Engineer of the Operating Company during the life of this Lease.

II.

The said party of the second part has covenanted, promised and agreed and does hereby covenant, promise and agree to pay to the said party of the first part, for said right, the following sums of money:

73 (a) A rental of fifty one thousand one hundred seventeen and seventy-six one hundredths dollars (\$51,117.76) per annum;

(b) Fifty per cent (50%) of all taxes assessed against the property or paid by said party of the first part during the life of this lease;

(c) A proportion, based on wheelage, of the expense of operating and maintaining the said bridge, its approaches and tracks, and of the depreciation thereof (which depreciation, for the purpose of this agreement, is fixed at \$10,000.00 per annum); provided, however, that the amount to be paid hereunder shall not exceed a maximum of seventy-five per cent (75%) of the whole expense of operating and maintaining the bridge, its tracks, and approaches, and of the depreciation.

All the above to be paid to the treasurer of the said first party in equal monthly installments.

III.

In all cases of injury, loss or damage occurring in the use of said bridge, tracks and approaches, each party hereto shall bear and pay all loss or damage to its own property or employes, or to persons or property in its charge, caused by any defects in said bridge or approaches from whatever cause arising; or for any loss or damage resulting from any other cause than defects in said bridge, its tracks or its approaches, as aforesaid, each party shall bear and pay all loss and damage to its own property or employes, or to persons or property in its charge, or to third persons or their property, caused by the negligence or fault of its sole employes; and if (except for defects in said bridge, tracks and approaches as aforesaid) accidents occur through the negligence of employes of both parties, each party shall bear its own loss, including injury to its employes and persons and property in its custody.

In Witness Whereof each of the parties hereto has caused these presents to be executed by its President and attested by its Secretary the day and year first above written.

[SEAL.] SIOUX CITY BRIDGE COMPANY,
By MARVIN HUGHITT,
Its President.

Attest:
JNO. D. CALDWELL, *Its Secretary.*

[SEAL.] CHICAGO, ST. PAUL, MINNEAPOLIS AND
OMAHA RAILWAY COMPANY,
By W. A. GARDNER, *Its President.*

Attest:
T. A. POLLEYS, *Its Secretary.*

75

EXHIBIT 7.

177. Whereas, by an agreement in writing dated the 28th day of June, 1910, the Sioux City Bridge Company leased to the Chicago St. Paul Minneapolis & Omaha Railway Company, the right to run and operate its locomotives, trains and cars upon and over the bridge, tracks and approaches over and across the Missouri river at or near the City of Sioux City, owned by said Sioux City Bridge Company, for the term of three (3) years, commencing on the first day of November, 1910, and ending on the thirty-first day of October, 1913; and

Whereas, it is mutually desired to extend the term of said lease for a further period of three (3) years;

Now Therefore, in consideration of the premises, it is mutually agreed that the term of said contract be, and the same hereby is extended for a further period of three years from and after the thirty-first day of October 1913, subject to all the terms and conditions in said agreement contained.

In Witness Whereof the parties hereto have caused this agreement to be executed this 23d day of October, 1913.

[SEAL.] SIOUX CITY BRIDGE COMPANY,
By W. A. GARDNER, *Vice President.*

Attest:
JOHN D. CALDWELL,
Secretary.

[SEAL.] CHICAGO, ST. PAUL, MINNEAPOLIS AND
OMAHA RAILWAY COMPANY,
By W. A. GARDNER, *President.*

Attest:
JOHN D. CALDWELL,
Asst. Secretary.

Approved as to form,
WILLIAM G. WHEELER,
Assistant General Counsel.

76

EXHIBIT 8.

178. Whereas, by an agreement in writing dated the 28th day of Mune, 1910, the Sioux City Bridge Company leased to the Chicago, St. Paul Minneapolis and Omaha Railway Company, the right to run and operate its locomotives, trains and cars upon and over the bridge, tracks and approaches over and across the Missouri River at or near the City of Sioux City, owned by said Sioux City Bridge Company, for the term of three (3) years, commencing on the first day of November, 1910, and ending on the thirty-first day of October, 1913, and

Whereas, said lease has been heretofore extended by agreement dated October 23, 1913, for a period of three years, or until October 31, 1916, and

Whereas it is mutually desired to extend the term of said lease for a further period of three (3) years;

Now Therefore, in consideration of the premises, it is mutually agreed that the term of said contract be, and the same hereby is extended for a further period of three years from and after the thirty-first day of October, 1916, subject to all the terms and conditions in said agreement contained.

In Witness Whereof, the parties hereto have caused this agreement to be executed this 31st day of August, 1916.

77 [SEAL.] SIOUX CITY BRIDGE COMPANY,

By M. HUGHITT,

President.

Attest:

JOHN D. CALDWELL,

Secretary.

[SEAL.] CHICAGO, ST. PAUL, MINNEAPOLIS AND
OMAHA RAILWAY COMPANY,

By JAS. T. CLARK,

President.

Attest:

JOHN D. CALDWELL,

Secretary.

78 179 Q. Are you familiar with the method of operating the Sioux City Bridge, that is, whether it is operated by the Sioux City Bridge Company itself or through some one else?

A. Yes, sir.

180 Q. What is the fact?

A. Since November 1, 1910, the Sioux City Bridge has been operated under agreements between the Sioux City Bridge Company and the Chicago, St. Paul, Minneapolis & Omaha Railway Company, whereby the Chicago, St. Paul, Minneapolis & Omaha Railway Company undertook the operation of the bridge.

181. Mr. Dressler: I will ask that these documents be marked appellant's Exhibits 9, 10, and 11. (Same are accordingly marked.)

182 Q. Handing you appellant's Exhibits 9, 10, and 11, you may state what they are?

A. Exhibit 9 is an agreement dated November 1, 1910, between the Sioux City Bridge Company and the Chicago St. Paul, Minneapolis & Omaha Railway Company providing for the operation of the bridge by the latter company.

183. Exhibit 10 is an agreement dated October 23, 1913, between the Sioux City Bridge Company and The Chicago St. Paul, Minneapolis & Omaha Railway Company extending the agreement of November 1, 1910 Exhibit 9, for a period of three years.

184. Exhibit 11 is an agreement dated August 31, 1916, between the Sioux City Bridge Company and the Chicago, St. Paul
79 Minneapolis & Omaha Railway Company extending the agreement of November 1, 1910 Exhibit 9 for a period of three years.

185 Q. Do the contracts represented by Exhibits 9, 10 and 11 constitute the agreement for the operation of the Sioux City bridge which is in existence at the present time and has been since the date of Exhibit 9?

A. They do.

186 Q. And are the Exhibits 9, 10 and 11 certified copies of original contracts on file in your office?

A. They are.

187. Mr. Dressler: It is stipulated and agreed that Exhibits 9, 10 and 11 may be offered and received in evidence with like effect as the originals might be, and the appellant now offers in evidence Exhibits 9, 10 and 11, both inclusive, offering each separately, and asks that a correct copy thereof be substituted for the original.

188. Exhibits 9, 10 and 11, are received in evidence, there being no objection, and they are considered read, and true and correct copies thereof here follow:

Exhibits 9, 10 and 11.

80

EXHIBIT 9.

189. Memorandum of Agreement made and entered into this first day of November, 1910, by and between the Sioux City Bridge Company, a corporation created and organized under and pursuant to the laws of the state of Iowa, party of the first part, and the Chicago St. Paul, Minneapolis and Omaha Railway Company, a corporation created and organized under and pursuant to the laws of the state of Wisconsin, party of the second part, as follows:

Whereas, the party of the first part owns and maintains a railroad bridge over and across the Missouri river at or near the City of Sioux City, in the state of Iowa, with approaches and tracks connecting therewith, and desires to have said bridge, approaches and tracks operated and maintained by the party of the second part for a term of three years from and after the 31st day of October, 1910.

I.

Now Therefore, in consideration of the premises and of the mutual covenants and agreements herein contained the said parties hereby covenant and agree each to and with the other that said bridge, approaches and tracks connecting therewith shall be operated and maintained by the party of the second part for a term of three years from and after the 31st day of October, 1910; that said second party shall furnish the material necessary to do such maintenance and employ workmen necessary to do such work and to properly inspect and protect said bridge, approaches and tracks; that said
81 second party shall on or before the tenth day of each month submit to said first party an itemized statement of the moneys so expended during the preceding calendar month and shall add thereto a charge of ten per cent (10%) on the moneys so expended for labor, and a charge of fifteen per cent (15%) on the moneys so expended for materials furnished, and said first party shall promptly pay said second party the amount of the statement so rendered.

II.

It is agreed that the movement of all engines, cars and trains over and across said bridge, approaches and tracks connected therewith shall be under the direction of and subject to rules and regulations prescribed by said party of the second part, which rules and regulations shall as nearly as may be practicable secure equality of right privilege and advantage to all trains of the same class and shall have like application to all movements over said bridge, approaches and tracks.

III.

In all cases of injury, loss or damage occurring in the use of said bridge, approaches and tracks each party hereto and each of its lessees shall bear and pay all loss or damage to its own property or employes or to persons or property in its charge, caused by any defects in said bridge, approaches and tracks from whatever cause arising; and for any loss or damage resulting from any other
82 cause than defects in said bridge its approaches or tracks, as aforesaid, each party hereto and each of its lessees shall bear and pay all loss or damage to its own property or employes, or to persons or property in its charge or to third persons or their property caused by the negligence or fault of its sold employes; and if (except for defects in said bridge and its track and approaches as aforesaid) accidents occur through the negligence of employes of both parties hereto or their lessees, each party shall bear its own loss, including injury to its employes and to persons and property in its custody.

In Witness Whereof the parties hereto have caused these presents to be executed by their Presidents and attested by their Secretaries, the day and year first above written.

[SEAL.]

SIoux CITY BRIDGE COMPANY,
By MARVIN HUGHITT,
President.

Attest:

By JOHN D. CALDWELL,
Secretary.

[SEAL.]

CHICAGO, ST. PAUL, MINNEAPOLIS
AND OMAHA RAILWAY COM-
PANY,
By W. A. GARDNER,
Pres.

Attest:

By T. A. POLLEYS.

Approved for Execution.

JAS. T. CLARK,
Second Vice-President.

Approved as to form:

J. B. A.

83

EXHIBIT 10.

190. Whereas, by an agreement in writing dated the first day of November, nineteen hundred and ten, between the Sioux City Bridge Company, first party, and Chicago, St. Paul, Minneapolis and Omaha Railway Company, second party, it was agreed that said second party should for the term of three (3) years from and after the thirty-first day of October, nineteen hundred and ten operate and maintain the bridge of the first party over and across the Missouri River, at or near the city of Sioux City, in the state of Iowa, with the approaches and tracks connecting therewith, and furnish therefor the material necessary and employ the workmen necessary to do such work and to properly inspect and protect said bridge, approaches and tracks, and

Whereas, it is mutually desired to extend the term of said agreement, for a further period of three (3) years;

Now therefore, in consideration of the premises, it is mutually agreed that the term of said agreement be and the same hereby is extended for a further period of three (3) years from and after the thirty first day of October, nineteen hundred and thirteen, subject to all the terms and conditions of said agreement of November first, nineteen hundred and ten.

In Witness Whereof the parties hereto have caused this agreement to be executed this 23d day of October, nineteen hundred and thirteen.

[SEAL.]

SIOUX CITY BRIDGE COMPANY,
By W. A. GARDNER,
Vice-President.

84

Attest:

JOHN D. CALDWELL,
Secretary.

[SEAL.]

CHICAGO, ST. PAUL, MINNEAPOLIS
AND OMAHA RAILWAY COM-
PANY,
By W. A. GARDNER,
President.

Attest:

JOHN D. CALDWELL,
Asst. Secretary.

Approved as to form:

WILLIAM G. WHEELER,
Assistant General Counsel.

85

EXHIBIT 11.

191. Whereas, by and agreement in writing dated the first day of November, nineteen hundred and ten, between the Sioux City Bridge Company, first party and Chicago, St. Paul Minneapolis and Omaha Railway Company, second party, it was agreed that said second party should for the term of three (3) years from and after the thirty first day of Lotober, nineteen hundred and ten, operate and maintain the bridge of the first party over and across the Missouri river at or near the city of Sioux City, in the state of Iowa, with the approaches and tracks connecting therewith, and furnish therefor the material necessary and employ the workmen necessary to do such work and to properly inspect and protect said bridge, approaches and tracks; and

Whereas, said agreement has been extended heretofore, under date of October 23, 1913, for a period of three years, or until October 31, 1916, and

Whereas, it is mutually desired to extend the term of said agreement for a further period of three (3) years:

Now, Therefore, in consideration of the premises, it is mutually agreed that the term of said agreement be and the same hereby is extended for a further period of three (3) years from and after the thirty first day of October, nineteen hundred and sixteen, subject to all the terms and conditions of said agreement of November first, nineteen hundred and ten.

86 In Witness Whereof, the parties hereto have caused this agreement to be executed this 31st day of August, nineteen hundred and sixteen.

[SEAL.]

SIoux CITY BRIDGE COMPANY,

By M. HUGHITT,

President.

Attest:

JOHN D. CALDWELL,

Secretary.

[SEAL.]

CHICAGO, ST. PAUL, MINNEAPOLIS

AND OMAHA RAILWAY COM-

PANY,

By JAS. T. CLARK,

President.

Attest:

JOHN D. CALDWELL,

Secretary.

Approved as to form:

WILLIAM G. WHEELER,

General Solicitor.

87 192 Q. Are you familiar with the source from which the franchise for the construction of the Sioux City bridge was derived?

A. Yes.

193 Q. From what authority was the franchise received?

A. The bridge rights were granted by act of Congress approved August 15, 1876. The plans were approved by the Secretary of War June 14, 1887. Modified plans were approved by the Secretary of War March 8, 1888. The site and location of the bridge were approved by the Board of Supervisors of Woodbury County, Iowa, in June, 1887.

Cross-examination.

Questions by Mr. Geo. W. Leamer:

194 Q. Mr. Caldwell, can you tell me how far the approach extends on the Nebraska side?

A. There are 1.14 miles in Nebraska and 1.74 miles in Iowa, total 3.88 miles.

195 Q. That is from the middle of the stream?

A. That is from the thread of the stream to the end of the tract on either side, as I understand it.

196 Q. What does the approach consist of, just one track?

A. I think so.

197 Q. This approach then just includes main line mileage?

A. That is right.

198 Q. Now, as I understand, your contract or lease with the

Burlington Railroad is that they pay you 3 per cent on \$1,022,355.28?

A. Yes.

88 199 Q. And they are to give you annually their proportion of the expense of operating and maintaining the bridge and depreciation, which depreciation is fixed at \$10,000.00 per year?

A. A wheelage proportion with a minimum of 25 per cent of the whole expense of operation, maintenance and depreciation, and the depreciation is fixed at \$10,000.00 per year.

200 Q. How did they figure that wheelage proportion?

A. Well, it is on account of the number of wheels passing over the bridge.

201 Q. Who keeps that? You have no record of that, have you?

A. I have no record of that no.

202 Q. And the Chicago, St. Paul, Minneapolis & Omaha Railway Company is to pay you, is it 5 per cent on the investment?

A. Yes.

203 Q. That will make a total of 8 per cent for both?

A. Yes, 8 per cent for both.

204 Q. And both of these railroads are to pay the taxes? in proportion to their wheelage?

A. Each pay half the taxes.

205 Q. And the maintenance, as I understand it, the upkeep of the bridge?

A. Yes, the wheelage proportion of operation, maintenance and depreciation, the depreciation being fixed at \$10,000.00.

206 Q. The bridge Company does not pay for any of the maintenance at all, does it?

89 A. No. It does pay the Omaha Company, however, for acting as the operating company.

207 Q. What is what this agreement, Exhibit 9, I suppose, is?

A. Yes.

208 Q. Then what is known as the Omaha Road is the one that keeps this bridge and approach in repair?

A. For the Sioux City Bridge Company, acting as their agent.

209 Q. For the Sioux City Bridge Company?

A. Yes.

210 Q. And then the Burlington pays their proportionate share of that?

A. Yes.

211 Q. In other words, the two railroads pay the maintenance and operating?

A. Yes, sir.

212 Q. I think you said you had no record of the number of wheels run over this bridge?

A. I have no such record.

213 Q. What did you say the value was of this approach, the approach alone?

A. I did not state that.

214 Q. Could you give us the value of that approach?

A. No.

215 Q. Mr. Caldwell, do you know how many stockholders there are in this Bridge Company?

A. Yes, sir.

216 Q. Could you give those to us?

90 A. Nine stockholders of record, which includes, I ought to say, qualifying stock.

217 Q. Will you give us the names of those nine stockholders?

A. Marvin Hughitt as Chairman of the Board of Directors of the Chicago & North Western Railway Company 4,729 shares; Marvin Hughitt as Chairman of the Board of Directors of the Chicago, St. Paul, Minneapolis & Omaha Railway Company 4,722 shares; Marvin Hughitt, 1 share; David P. Kimball, 1 share; William H. Finley, 1 share; Marvin Hughitt, Jr., 1 share; John D. Caldwell, 1 share; J. F. Cleveland, 1 share; James T. Clark, 1 share; total, 9,458 shares.

218 Q. Who are the officers of this Sioux City Bridge Company?

A. James T. Clark, President, William H. Finley, Vice-President; John D. Caldwell, Secretary; E. F. Brown, Assistant Secretary; John D. Caldwell, Treasurer; Barrett Conway, Assistant Treasurer; Louis A. Robinson, Comptroller.

Redirect examination.

Questions by Mr. Wymer Dressler:

219 Q. Mr. Caldwell, the items you have just answered concerning the terms of rental and proportion of expense and so forth, as I understand it are merely re-statements of the provisions of the rental contracts?

A. Yes, sir.

Witness excused.

91 L. A. ROBINSON, of lawful age, being by me first duly examined, cautioned and solemnly sworn, as hereinafter certified, deposeth and saith as follows, viz:

Questions by Mr. Dressler:

220 Q. You may state your name?

A. L. A. Robinson,

Q. You live in Chicago?

A. Yes, sir.

221 Q. Have you any official relation to the Sioux City Bridge Company, a corporation?

A. I am the comptroller.

222 Q. What are your duties as comptroller?

A. Accounting officer; keep the accounts of the Sioux City Bridge Company.

223 Q. Have you as a part of the records of your office access to the original cost of the Sioux City bridge at Sioux City Iowa?

A. I have.

224 Q. Have you prepared a compilation of the various items of cost of that structure from the records in your office?

A. I have.

225 Mr. Dressler: I will ask that these documents be marked for identification appellant's exhibits 12 and 12½ respectively.

(Same are accordingly marked.)

226 Q. Handing you paper which the reporter has marked Exhibit No. 12, you may state what it is?

A. That is a statement taken from the books of the company showing the cost of the bridge to September 30, 1918.

227 Q. And does Exhibit 12 include all items of cost which have been charged on the books as investment?

A. As investment cost.

228 Q. Do the records of your office show the operating income from the Sioux City bridge both as respects the amounts collected while the bridge was operating as a toll bridge and since the tolls were discontinued?

A. They do.

229 Q. Handing you a paper which the reporter has marked Exhibit 12½, you may state what that is?

A. This is a statement of the tolls, operating expenses, taxes and net operating income for each of the years from 1897 to June 30, 1907, and July 1, 1907 to October 1, 1907.

230 Q. Are the figures shown on these two exhibits, 12 and 12½ accurately taken from the records?

A. Yes, sir.

231 Q. Can you explain why there are two dates covering operations in the year 1907?

A. Because the bridge tolls stopped on October 31, 1907.

232 Q. And from that day the rental charges commenced?

A. Yes, sir.

233 Mr. Dressler: It is hereby stipulated and agreed that Exhibits 12 and 12½ may be offered and received in evidence with like effect as the original records from which the information thereon shown was taken might be.

93 And appellant now offers in evidence said Exhibit- 12 and 12½ and asks that correct copies thereof be substituted in this record for the originals.

234 There being no objection, Exhibits 12 and 12½ are received in evidence, are considered as having been read to the court, and true and correct copies of the same here follow:

Exhibits 12 and 12½.

94

EXHIBIT 12.

Sioux City Bridge Company.

235 Statement of Cost of Bridge and Approaches to September 30, 1918.

Engineering	\$26,348.35
Preliminary survey	4,700.00
Right of Way and Franchises	49,286.77
East approach grading	31,886.03
West approach grading	14,366.16
Protection west shore	7,213.10
Shore protection	27,951.21
Grading	27.52
East abutment	1,663.49
Foundation Pier No. 1	8,515.76
" " " 2	51,351.89
" " " 3	53,144.54
" " " 4	43,131.58
" " " 5	35,522.28
Masonry Pier No. 1	18,641.78
" " " 2	42,173.86
" " " 3	41,086.43
" " " 4	41,705.16
" " " 5	20,132.23
Main spans	243,367.41
Approach spans	972.68
East approach trestle and bridges	26,151.35
West approach trestle and bridges	21,066.21
Floor	10,013.73
Painting	3,891.14
95 Bridges, trestles and culverts	248.65
Main tracks	36,172.32
Ties	119.16
Rails	813.21
Other track material	369.97
Track laying and surfacing	60.29
Sidings	10,461.44
Fences	176.08
Expenses and construction supply depots	9,874.47
Tools and machinery	11,874.47
Service tracks	14,719.63
Buildings	135.95
Interlocking and other signal appliances	480.58
Miscellaneous expenses	9,521.69
Interest on advances during construction	18,071.19
Interest on bonds during construction	10,519.84
	<hr/>
	\$947,929.60
Deduct Account retirement on Bridge and Approaches	6,928.90
	<hr/>
	\$941,000.70

Office of Comptroller, November 26, 1918.

236. EXHIBIT 12½.

Sioux City Bridge Company.

Statement of Net Operating Income from June 1, 1896, to October 31, 1907.

	Bridge tolls.	Operating expenses.	Taxes.	Total operating expenses and taxes.	Net operating expenses.
June 1, 1896, to May 31, 1897.....	\$136,246.56	\$19,321.13	\$8,680.32	\$28,001.45	\$108,245.00
June 1, 1897, to May 31, 1898.....	157,277.40	16,849.26	5,958.05	22,807.31	134,470.09
June 1, 1898, to May 31, 1899.....	168,560.10	14,814.81	7,609.55	22,424.36	146,135.74
June 1, 1899, to May 31, 1900.....	169,525.93	7,349.49	6,175.11	13,524.60	156,001.33
June 1, 1900, to May 31, 1901.....	176,970.89	8,217.35	5,408.22	13,625.57	163,345.32
June 1, 1901, to May 31, 1902.....	163,476.47	8,832.39	5,426.44	14,278.83	149,197.64
June 1, 1902, to May 31, 1903.....	185,289.00	10,978.86	9,239.31	20,218.17	164,942.88
June 1, 1903, to June 30, 1904.....	187,289.00	23,535.11	8,874.41	32,409.52	154,879.48
July 1, 1904, to June 30, 1905.....	166,326.99	9,302.83	7,067.76	16,370.59	149,956.40
July 1, 1905, to June 30, 1906.....	208,093.25	7,700.26	7,126.45	14,826.71	193,266.54
July 1, 1906, to June 30, 1907.....	243,455.65	5,475.21	7,791.64	13,266.85	230,188.80
July 1, 1907, to October 31, 1907.....	85,601.51	9,953.40	11,685.89	21,639.29	63,962.22

Office of Comptroller, November 22, 1918.

97 Cross-examination.

Questions by Geo. W. Leamer:

237 Q. Mr. Robinson, I understand Exhibit 12 shows the cost of building the bridge?

A. Yes, sir.

238 Q. And that is down to what date?

A. September 30, 1918.

239 Q. Everything that has been expended in it?

A. Yes Sir.

240 Q. That includes both of the approaches?

A. Yes, the whole bridge.

241 Q. And this item here that says "West approach trestles and bridges," is that the one in Nebraska?

A. Yes.

242 Q. And the "East approach trestle and bridges" is the one in Iowa?

A. The one in Iowa.

243 Q. Does that item for the west approach trestle and bridges include all the approach of 2.14 miles?

A. Well, I have to speak now from the books as we get them, and this is all the information that I have. I have not gone into it to see just exactly what it includes, but of course it is the whole bridge, and this is the separation that was used at the time the bridge was built.

244 Q. As they were separated at the time?

A. Yes, classification, I might call it.

98 245 Q. Are there any items there for the year 1918?

A. Yes, there is, very little; very little in the year 1918, practically nothing.

246 Q. Practically nothing?

A. Yes.

247 Q. As a matter of fact there aren't very many items there for the last few years?

A. No; very little.

248 Q. What items are there, can you state, for 1918, for the last—well, after the bridge was completed?

A. I think I can give you that. There hasn't been anything in five years, any addition that increased the cost of the bridge.

249 Q. In five years?

A. No.

250 Q. In this statement Exhibit 12, there are several items that refer to the east approach. That means the approach in Iowa?

A. The east approach is the approach in Iowa.

251 Q. And the items that state "West approach" means the approach in Nebraska?

A. In Nebraska.

252 Q. There is an item here of main tracks \$36,172.32. Do you know how much trackage you have on the Nebraska side?

A. No. I think you had better get that in the engineering department.

253 Q. I notice in this Exhibit 12 there is an item of deduction account retirements on bridge and approaches. Just state briefly what that is?

A. Now, the reason that is taken from the total is that that classification that was used in the bridge at that time does not fit the present classification.

254 Q. Do you hold any position with the Chicago, St. Paul, Minneapolis & Omaha Railroad?

A. I am comptroller of that company.

255 Q. Do you hold any position with the Chicago Burlington & Quincy Railroad?

A. No.

Redirect examination.

Questions by Mr. Wymer Dressler:

256 Q. This classification you speak of, that is a system of accounting prescribed by the Interstate Commerce Commission?

A. Well, this I don't think is now. That is an old matter. This is an old classification, but they have a classification now, construction classification, which would be somewhat different, but this is the way the bridge was built at the time under that classification.

257 Q. This deduction of \$6,928.90 represents the value of some part of the original structure—

A. Which has been written out and replaced, probably cheaper.

258 Q. Now if there is any value of that bridge and approach in addition to the value shown on Exhibit 12, such as the cost of filling in trestles and things of that nature, would a record of that be in the hands of the engineering department?

A. I should say the engineering department, I think, would have that complete.

259 Q. So that so far as you know the actual cost of the bridge today might be a trifle more than is shown by the book record?

A. Yes, sir.

Recross-examination.

Questions by Mr. Geo. Leamer:

260 Q. Exhibit 12 just shows what you have spent in building that bridge and the approaches?

A. What we have spent and charged to investment in building that bridge and approaches.

Redirect examination:

261 Q. But the books probably show a smaller charge to construction cost than actually exists?

A. I should say so, yes.

262 Q. In other words, this total shown on Exhibit 12 is a very conservative total?

A. Oh, yes.

(Witness excused.)

101 263 I, William J. Mitchell, Notary Public in and for the country of Cook, in the state of Illinois, do hereby certify that John D. Caldwell and L. A. Robinson were by me first severally duly sworn to testify the truth, the whole truth and nothing but the truth, and that the depositions by them, respectively, as above set forth, were reduced to writing by myself in the presence of the witnesses, respectively, by means of shorthand, and were afterwards by me transcribed upon a typewriter; that said depositions were taken at the time and place in the annexed notice specified; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In Testimony Whereof I have hereunto set my hand and notorial seal this 29th day of November, A. D. 1918.

[Notorial Seal.]

WILLIAM J. MITCHELL,
Notary Public, Cook County.

Fees \$17.00 paid by appellant.

(The above depositions were contained in envelope properly sealed — addressed to the clerk of this court, with all proper endorsements, filed Dec. 3, 1918, Geo. Wilkins, Clerk District Court.)

102 265 Mr. Dressler: The appellant now offers in evidence the deposition of H. Rettinghouse, taken at St. Paul, Minn., Nov. 29, 1918, as follows:

STATE OF NEBRASKA,
Dakota County, ss:

In the District Court of Dakota County, Nebraska.

In the Matter of the Appeal of the SIOUX CITY BRIDGE COMPANY from the Assessment of Its Property in Dakota County for Taxing Purposes.

Notice to Take Depositions.

266 The above named respondent will take notice that on Friday the 29th day of November, 1918, the said appellant will take the deposition of H. Rettinghouse, to be used as evidence on the trial of the above entitled cause, before competent authority at the law department of the C., St. P., M. & O. Ry. Co., Fourth & Rosebel Streets, City of St. Paul, County of Ramsey state of Minnesota at the hour of 2 o'clock P. M. with authority to adjourn from day to day until all such depositions have been taken. It is hereby stipulated between the parties that the testimony of the witnesses herein

named may be reported in shorthand by a stenographer, and afterwards transcribed into longhand or type-writing by such stenographer, and the signatures of the witnesses are hereby waived.

WYMER DRESSLER,
BYRON CLARK,

Attorneys for Appellant.

Received copy of above notice this 22d day of November, A. D. 1918.

GEO. W. LEAMER,

County Attorney, Dakota County, Nebraska,

Attorney for Respondent.

267 Deposition of H. Rettinghouse, taken before me, F. H. Ford, a Notary Public, within and for the County of Ramsey, in the state of Minnesota, on the 29th day of November, in the year 1918, between the hours of two and five p. m., at the Law Department of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, pursuant to the annexed notice, to be read in evidence in behalf of the appellant in an action pending in the District Court of Dakota County, Nebraska, in which the Sioux City Bridge Company is appellant and Dakota County, Nebraska, is respondent.

Appearances:

Wymer Dressler, Esq., for appellant.

Geo. W. Leamer, Esq., County Attorney, for Respondent.

H. RETTINGHOUSE, of lawful age, being by me first duly examined, cautioned and solemnly sworn, as hereinafter certified, deposeth and sayeth as follows:

Direct examination.

By Mr. Dressler:

268 Q. Where do you live, Mr. Rettinghouse?

A. St. Paul.

269 Q. What is your age?

A. 57.

270 Q. What is your business?

A. Civil Engineer.

271 Q. Have you any official connection with the Sioux City Bridge Company?

A. I am chief engineer of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, which is the operating company for the Sioux City Bridge Company.

272 Q. How long have you been a civil engineer, Mr. Rettinghouse?

A. About thirty years.

104

273 Q. How long have you been chief engineer of the Chicago, St. Paul, Minneapolis & Omaha Railway Company?

A. Five years.

274 Q. What are your duties as chief engineer of that railway with respect to bridges?

A. I am in full charge of the construction and maintenance of all bridges.

275 Q. In the past five years have you had anything to do with the Sioux City Bridge at Sioux City, Iowa?

A. I have, in the way of maintenance.

276 Q. In what way?

A. In maintaining the bridge as to physical up-keep.

277 Q. And have you been familiar with the bridge during that period?

A. I have.

278 Q. And are at the present time?

A. I am.

279 Q. What is the general condition of that bridge at the present time?

A. The physical condition of the bridge is very good.

280 Q. What is the fact as to whether or not the bridge can be used for traffic in the same way as any other piece of the railway, not a bridge? I mean, will the bridge sustain traffic which other parts of the railroad will sustain?

A. It will not.

281 Q. Why not?

A. The bridge was designed for lighter traffic both as to weight of locomotives and rolling stock, and inasmuch as the weight of locomotives and rolling stock as not used has greatly increased, the bridge is not strong enough to carry the heavier traffic.

282 Q. Would you say, then that the bridge at the present time is or is not out of date?

A. The bridge is totally out of date.

283 Q. Are you familiar with a question that arose as to the strength of the bridge for carrying heavy locomotives that are now in use by the Burlington Company in that vicinity?

A. Yes, sir.

284 Q. What was done, if you know?

A. I had an investigation made by an expert bridge engineer in 1915, I believe, in the spring of 1915, having in view the investigation as to whether or not, or whether, the bridge was strong enough for a certain class of engines, or what might be done to bring that about. Do you want me to go on?

285 Q. Yes, go ahead?

A. From that investigation it developed that the class of traffic which we are now operating on the Western Division which is from St. Paul to Sioux City, was not suitable for this bridge. We had desired to extend that class of traffic, or rather, the operation of that class of engines, which we are operating over the Western Division, also across the bridge, over the Nebraska Division, to Omaha. We found that the bridge was not of sufficient strength to do that, and in order to make the bridge suitable, it

would have required further investigation as to the possible reinforcing of the bridge. The report which we had at the time stated that it might be possible, but it could not be determined until after a more thorough investigation. At any rate, the bridge is of a rather peculiar design that makes reinforcement if not entirely impossible, at least very expensive. I don't know as I should go into the details.

286 Q. I will ask a further question. What is the fact as to whether or not the bridge is now operated under certain limitations as to weight which may be placed upon it?

A. The restrictions in the operation of the bridge are such as to prevent our so-called class 1-1 and 1-2 engines from going over this bridge, which are the limit of the class on the Western Division at the present time.

287 Q. You mean the heaviest type of engines?

A. Yes; and even at this date, since—well, I could not tell you how many years—possibly since the bridge was built, a speed limit of ten miles an hour is in existence over that bridge.

288 Q. Is it possible to double-head engines over the bridge now?

A. We do not allow double-heading; it is not possible.

289 Q. Is it safe?

A. It is not safe, I meant to say, to operate double-head engines that are now operated on the Nebraska Division.

107 290 Q. And double-heading of engines on other portions of the railroad is a common practice?

A. Oh, yes.

291 Q. What is the fact as to whether or not the Burlington Company has engines too heavy to put upon that bridge?

A. The investigation which I referred to as having been made in the spring of 1915 was the result of a request by the Burlington people to operate a certain class of engines there heavier than they are operating over the bridge now; and it was found that it was not possible to operate that class of engines over the bridge.

292 Q. Is that bridge suitable for anything else except to be used as part of a railroad?

A. It is for railroad purposes only.

293 Q. Does the bridge have any value except for railroad purposes?

A. None whatever.

294 Q. Have you considered what it would probably cost to reinforce that bridge so it would accommodate the heaviest type of engines which are being used in the vicinity, if it is possible at all to reinforce the bridge?

A. We have not made detailed investigation of that, but we have made investigation enough to know that if a reinforcement at all is possible, it would mean the building of false-work, or, rather, a temporary bridge built under the bridge to hold the bridge structure as well as the traffic during such time that reinforcement would
108 have to be made. Such false-work or temporary bridge would necessarily be very expensive, due to the fact that the time is very limited that the false-work across the Missouri river could be

maintained. And not having made any special investigation, I cannot quote any exact figures, but my opinion is that in order to reinforce the bridge, always with the proviso that it is possible to do so, including the building of the false-work, it would cost no less than two hundred thousand dollars.

295 Q. Have you had experience in building railroad bridges?

A. Quite a good deal.

296 Q. You may state whether or not your opinion you have just given as to the minimum cost of making alterations to that bridge is based upon your experience as a bridge builder and maintainer?

A. With the last five years—

297 Q. Just answer yes or no?

A. Yes.

298 Q. Now, go on, why?

A. Within the last five years, since I assumed charge of my present duties, we have built at least two important bridges, one of them across the Mississippi at St. Paul, and one of them across the Chippewa river, near Chippewa Falls, Wisconsin. While they are important bridges, they could hardly be compared with a structure like the Missouri river bridge at Sioux City; but in the first instance

mentioned, it was the rebuilding of an existing bridge, requiring the maintenance of false-work during the construction of the bridge. The other case, it was a new bridge on a new line—location.

299 Q. Now, if such reinforcement of the Sioux City bridge were undertaken, it could not be accomplished without this false-work to maintain traffic during the repairs?

A. It would be impossible.

300 Q. You mean it would be impossible to maintain traffic without the false-work?

A. It would be impossible to maintain traffic and make repairs without false-work.

301 Q. You may state, from your experience as a civil engineer, whether or not, in your opinion, it would be practicable, from an economic standpoint, to attempt to reinforce that Sioux City bridge, so as to make it a modern bridge which would accommodate the kind of traffic that is prevalent in railroading in these days?

A. I should say it would not be a practicable or economical proposition.

302 Q. Assuming that it would be a good investment to attempt to reinforce that bridge, what would have to be done to make the bridge a modern bridge, which would accommodate modern traffic?

A. It would mean the building of a new bridge.

303 Q. The entire superstructure would have to be replaced, would it?

A. Yes, sir.

110 304 Q. Now, assuming that that bridge is thirty years old and has been used continuously as a railroad bridge during that period, and having in mind the design of bridge which it is, and with which you are familiar, and having in mind the conditions of traffic as they exist today, with respect to the weight of loco-

motives and rolling stock, as compared with the conditions of traffic existing at the time the bridge was built, and for which the bridge was designed, you may state whether or not you have an opinion as to the depreciation in market value of that bridge, based upon its original cost? To illustrate: assuming that the bridge cost approximately \$950,000.00, and that it would take at least \$200,000.00 to make it a modern bridge, would the facts that I have mentioned in this question, in your opinion, justify the statement that the bridge has depreciated value today as against its original cost? Yes or no?

A. Yes.

305 Q. Now, having in mind the figure I have given you as to the original cost and the cost of making the bridge modern, what, in your opinion, would be the percentage of depreciation in market value of the bridge today?

A. I should consider the depreciation equal to the cost of putting the bridge in shape for modern traffic.

306 Q. That is, you mean that the value of the bridge today, in your opinion, would be at least \$200,000.00 less than the
111 original cost?

A. Yes, sir.

Cross-examination.

Questions by Geo. W. Learner:

307 Q. Mr. Rettinghouse, you say that the physical condition is very good. Just what do you mean by physical condition?

A. I mean the preservation of the material constituting the bridge; for instance, the steel—it is in good condition. Of course, insofar as the deck—what we call the deck of the bridge, which is timber, the ties and guard rails, the flooring—this is an item that is not to be considered in that, because that is one of the principal things we keep in first class physical condition. What I mean by physical condition of the bridge is that the masonry—

308 Q. The piers?

A. —The piers, trestles, the steel parts which compose the bridge are in good physical condition.

309 Q. In other words, the piers and trestles have not depreciated very much?

A. No, not to any great extent.

310 Q. Would you be willing to make an estimate of what per cent?

A. Well, it would be difficult to do that. For valuation purposes, we generally figure the life of masonry a hundred
112 years, and for steel bridges say seventy or seventy-five. But that is something that cannot be proven by any authority as to being a fact.

311 Q. That is what I understand, masonry a hundred and steel seventy?

A. Yes, we generally assume that for valuation purposes.

312 Q. You would not want to say, then, how much the steel, figuring on that basis, seventy or seventy-five years, has deteriorated?

A. It would be difficult to estimate that.

313 Q. You can't—

A. The only way to do that, would be to calibrate all this steel with a view of ascertaining whether or not its dimensions had diminished in size through corrosion.

314 Q. Would you say that the steel part has deteriorated ten per cent?

A. How old is the bridge?

315. Mr. Dressler: Thirty years old.

A. I could not give you any definite figure; I would not commit myself to any definite figure about that. So far as I know the steel work might be as good as when put in.

316 Q. When you said the physical condition was very good, you meant it is lots better than the ordinary bridge would be after thirty years?

A. Yes, sir.

317 Q. Or what you figured it would be when it is first put in?

A. The physical condition of a structure of that kind depends altogether on the care that is given it. You see, for instance highway bridges that are absolutely neglected, and they will deteriorate and go to pieces and get useless in a very short time. Our steel bridges are always given very good care; cleaned and painted at least every five years, and the bearings are oiled and looked after, so as to reduce the wear on everything to a minimum.

318 Q. Now, the masonry—you say that has deteriorated hardly at all?

A. Not to any extent. The copings—when I say copings, I mean the seats on which the bridge rests—

319 Q. That is, the top part?

A. The top. Of course they are subjected to the action of the elements more than anything else, and require occasional pointing up. Now we pointed up the copings this year, on account of the joints opening up or being affected by the weather, permitting moisture to enter and crowding them out some. But the copings, I believe, are all granite—the bridge seats—and they are practically as good as ever.

320 Q. May I ask you, is air harder on this masonry than water?

A. That is a pretty broad question; some engineers would — awfully glad if they had a solution of that.

321 Q. What I was getting at is, will the piers above water deteriorate faster than below?

A. Well, that depends on the kind of material used for them. Now, I could not tell you what stone is in that.

322 Q. That is immaterial anyway.

A. I am quite sure the copings are granite.

323 Q. Well, this bridge now is as strong as the engineers intended it to be when they first built it?

A. It is today just as strong, or practically as strong as it was, for the traffic intended to be put over that bridge.

324 Q. When the engineers built this bridge, they—

A. (Interrupting.) There is just one exception, that may not be of any consequence in the way it is—the floor of the bridge. The technical expression means the floor beams and the girders—stringers—not girders, carrying the track,—are more or less deteriorated, due to the action of salt brine from the refrigerator cars, and that deterioration has become quite marked, so that the floor which is of course a very important part of a bridge, is today not as strong as it was when the bridge was built.

325 Q. And that has been due to this brine, you say, from the refrigerator cars?

A. Yes.

326 Q. And it is was not for that, you figure that floor would be as strong as the rest of the structure?

A. I should say so.

327 Q. And the bridge now, the reason it is not strong enough is because the engines are all so much heavier and larger now than thirty years ago?

115 A. It is not suitable for the kind of traffic that is operating on either side of the bridge.

328 Q. Well, about all that can't go over that bridge is these big engines?

A. What do you mean by these big engines?

329 Q. What you call 1-1 and 1-a?

A. What is not the heaviest engines we have. We have engines that are a good deal heavier, which we are as yet operating over the Western Division. It will be only a question of a year or two when they will be operated there. They would be operated there now, if it were not for the war conditions. It is only a question of time then for that class of power will have to be extended over the entire system, with a bridge adequate for modern traffic.

330 Q. Here is what I was getting at; there is no box car on your road too big to go across that bridge?

A. There are some restrictions as to the loading across that bridge.

331 Q. In what way?

A. In the amount of—loading down the cars and the weight of the cars.

332 Q. Well, is that as to the individual car or cars connected?

A. It refers to individual cars as well as about the bunching of cars. We can't load any carload to go over this bridge that would exert a greater stress on that bridge than the power that is

116 going over it—the engines that are going over it—and hence the loads are restricted in that respect.

333 Q. Well, then, do I understand your answer to mean this, that the load of the car shall not be heavier than what the engine weighs?

A. Well, you can't express it that way. The weight or the stress that is exerted on the bridge is figured in regard to the wheel spacing. Now, if a car has a longer wheel spacing than the locomotive, it can be loaded heavier. You understand that means, the load is not centered on one particular point, so that ordinary carloads will not

exert more stress on a bridge than the power we are operating over it.

334. Mr. Dressler: By "power" you mean the engine?

The Witness: Engine, yes.

335 Q. Now, these restrictions you have for loading of the cars over this bridge—how is that regulated?

A. It is regulated through the superintendent issuing instructions about it.

336 Q. How to load the different cars and space the different lengths—

A. Yes.

337 Q. Double-head engines you allow to go across there with five cars between them?

A. I don't know just what the instructions are. It is marked on the time card. "It will not be permissible for engines to pass over bridge No. 2 over the Missouri river, at Sioux City, coupled together." Of course they could put two engines on a train and put about five cars or so between.

338 Q. That is my understanding.

A. That is about the way they handle them.

339 Q. How long are the spans of this bridge?

A. The main spans are 400 feet long each; and there is a deck-plate girder span 61 feet and 6 inches long on the east end; the west approach consists of ten spans of pile bridge. The total length of the bridge is 1,800 feet.

340 Q. That is the bridge proper?

A. Yes.

341 Q. Then you figure the depreciation on this bridge has not been as much as engineers generally figure depreciation on such structures?

A. Well, I think the depreciation, if there is a depreciation to steel bridges, is as much on that bridge as on any other steel bridge under the same conditions.

342 Q. Figuring the masonry at a hundred years and the steel at seventy to seventy five years, the bridge has not depreciated that much actually, has it?

A. It has not.

343 Q. And you would not want to say how much it has depreciated?

A. No, I could not say without a very close investigation of it.

Redirect examination.

118 By Mr. Wymer Dressler:

344 Q. What I understand you to mean by this last discussion of depreciation is the depreciation in the physical condition of the material in the bridge?

A. Yes, sir.

345 Q. But I understand your idea is that the depreciation of twenty-five per cent in value of which you spoke, is due rather to the changed conditions of the country and of the traffic?

A. Decidedly.

346 Q. Which make the bridge out of date?

A. Yes, sir.

347 Q. And that is still your opinion, is it?

A. Yes, sir, that is still my opinion.

348 Q. As a practical railroad man, you may state whether or not it is a fact that the depreciation you have stated is that much at least?

A. Yes, sir.

349 Q. What is the tendency in railroad circles as to increasing the weight of locomotives?

A. The tendency is to increase the weight of locomotives continually. The United States Government has recently gotten out standard plans and has built standard locomotives which are in excess of the heaviest engine which we are operating on the line.

350 Q. So that, as time goes on, the probabilities are that that bridge will be more and more in discard?

119 A. Yes, sir.

351 Q. On account of its out of date style and construction?

A. Yes, sir.

352 Q. And is it your opinion that that fact will influence and does influence the value of that bridge as an investment?

A. I should decidedly say so.

353 Q. Supposing, Mr. Rettinghouse, you were called upon to make a survey of that bridge in the interests of an investor who was in the market for a structure of that kind, to be used for railroad purposes, and you were to take into consideration the age of the bridge, and its style of construction, and its strength, and the changes in traffic conditions which have come about during the thirty years that bridge has been built, together with the tendency of the traffic to increase in weight, especially the usefulness of the bridge as a portion of a railroad system, what would you say to such an investor as to whether or not that bridge, as it is today, would be a high class medium or low grade investment in railroad property?

354. Mr. Leamer: That is objected to by the respondent as being incompetent, and irrelevant; and it is not shown that this witness is competent to answer such a question.

The objection is overruled

To which the respondent excepts.

120 A. I should advise any investor to leave the bridge severely alone.

355 Q. In other words, you would not regard it as a valuable property for new capital, under the circumstances?

A. I would not.

356 Q. But, now assuming that the investor wanted to buy it at reasonable value, in view of the conditions I have mentioned, assuming that the bridge cost, thirty years ago, approximately \$950,000.00 would you be able to advise him what percentage of that original cost he would be justified in paying for the bridge under the circumstances existing today? I mean the circumstances of traffic in the immediate future?

357 Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial, and this witness has not been shown to be competent to testify to the said facts asked for.

The objection is overruled.

To which the respondent excepts.

A. I could advise him.

358 Q. What percentage of the original cost would you be able to advise him he should invest in the property?

359 Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial, and this witness has not been shown to be competent to testify as to the facts asked for.

121 The objection is overruled.

To which the respondent excepts.

A. About seventy per cent.

Recross-examination.

Questions by Mr. George W. Leamer:

360 Q. Mr. Rettinghouse, there are two bridges across the Missouri river at Sioux City?

A. Yes, sir.

361 Q. What is known as the "High Bridge," this bridge in question and the "Combination Bridge?"

A. Yes.

362 Q. This is the only bridge used for railroad purposes and it is the stronger bridge of the two?

A. I don't know anything about the other bridge.

Signature of witness waived.

Witness excused.

Fees for taking this deposition \$13.84, paid by appellant.

363 I, F. H. Ford, Notary Public, in and for the state of Minnesota, County of Ramsey, do hereby certify that H. Rettinghouse was by me first duly sworn to testify the truth, the whole truth and nothing but the truth, that his deposition was taken by me in shorthand, and afterwards reduced to typewriting by myself; that same was taken at the time and place in the annexed notice
122 specified; that I am not counsel, attorney or relative of either party, or otherwise interested in the event of this suit; that the signature of said witness to said deposition was waived as stipulated in attached notice.

In Testimony Whereof I have hereunto set my hand and seal this second day of December, A. D. 1918.

[Notarial Seal.]

F. H. FORD,

Notary Public, Ramsey County, Minnesota.

My Com. Expires No. 13, 1920.

364 The above original deposition is contained in envelope, addressed, endorsed and sealed in usual manner, and is marked filed in this court Dec. 3, 1918. Geo. Wilkins, Clerk District Court; and the file further shows that on Dec. 13, 1918, opened at request of Geo. Leamer, County Attorney, signed Geo. Leamer, Clerk District Court.

123 F. T. DARROW, called as a witness in behalf of the appellant, and after being first duly sworn, testified as follows:

Direct examination.

By Mr. J. L. Root:

365 Q. State your name?

A. F. T. Darrow.

366 Q. How old are you?

A. I am 43.

367 Q. What is your occupation?

A. Civil Engineer.

368 Q. Are you in the employ of the Chicago, Burlington & Quincy Railroad Company?

A. Yes, sir.

369 Q. In what department?

A. In the engineering department of the lines west of the Missouri river.

370 Q. You have supervision of all lines west of the Missouri river?

A. Yes sir.

371 Q. How much mileage is there in your territory?

A. 4,700 miles of main track.

372 Q. How long have you been in that position?

A. Since the summer of 1908.

373 Q. Preceding that date had you had experience in railroad construction and maintenance?

A. Yes, sir.

374 Q. How long have you been a civil engineer?

A. Over 21 years.

124 375 Q. Had you any preliminary education in any school of learning?

A. Yes, sir.

376 Q. What?

A. I am a graduate of an engineering school at Meadville, Pennsylvania.

377 Q. And are you a graduate of that school?

A. Yes, sir.

378 Q. And has practically all of your engineering experience been in the maintenance department of railroads?

A. Most of it.

379 Q. In the discharge of the duties of your office does it become necessary for you to become acquainted and have you become ac-

quainted with the cost of the various materials that go into the construction and maintenance of railroads?

A. Yes, sir.

380 Q. Where money is expended for improvements or repairs within your territory, is it necessary, on the Burlington at least, that authority for that expenditure be given

A. Yes, sir.

381 Q. Who has the oversight and charge of figuring the amount of money that is required for the various materials necessary for that work?

A. Those figures, and that data, are prepared in my office, and made by me.

382 Q. In the first instance?

A. Yes, sir.

125 383 Q. And from your office they go to other executive offices for their approval?

A. Yes, sir.

384 Q. Within your territory are there any bridges over the Missouri river?

A. There are.

385 Q. Where?

A. At Plattsmouth, Nebraska City and Rulo.

386 Q. Were you in the employ of the Burlington Railroad as its engineer of maintenance when the Burlington acquired its present line from Ashland Nebraska to Ferry, Nebraska?

A. I was not in that position at that time, I was the principal assistant.

387 Q. You were in that department?

A. Yes, sir.

388 Q. Has the Burlington Railroad any terminals in Sioux City?

A. It has no terminals in Sioux City, Iowa.

389 Q. But it has a line, and operates it, from Ashland, Nebraska, to Ferry, Nebraska?

A. Yes, sir.

390 Q. At Ashland Nebraska the line connects with the Burlington's trunk lines running to the west and north-west, does it not?

A. Yes sir.

126 391 Q. And how does the Burlington reliver freight or receive freight into or out of Sioux City, Iowa?

392 A. It received freight from the other roads or the lines of the Great Northern Railroad, and hauls the cars across the Sioux City bridge with what they call a pingpong, or light engine drawing the cars back and forth, over to Ferry, where the freight may be going west.

393 Q. Ferry is in Dakota County Nebraska?

A. Yes, sir.

394 Q. How far is Ferry from the Missouri river?

A. About two miles.

395 Q. In Sioux City what terminals are occupied by the Burlington?

A. They occupy mostly the Great Northern terminals.

396 Q. The Great Northern has a permanent terminal in Sioux City?

A. Yes sir.

397 Q. And the Great Northern Railroad, in connection with the Northern Pacific are the roads that affiliate with or control the Burlington?

A. Yes, sir.

398 Q. And there are very close traffic arrangements between those three roads?

A. Yes, sir.

399 Q. From what railroad did the Burlington Railroad acquire this line from Ashland to Ferry?

A. From the Great Northern.

127 400 Q. Is that a high or low grade line?

A. It is a low grade railroad.

401 Q. What is the ruling grade on that line?

A. Four tenths of one per cent.

402 Q. To what?

A. To the mile.

403 Q. What is the character of the roadbed and steel laid on that line?

A. The road bed is well built with the usual width fills; very wide cuts, and the bridges are normal, good, originally laid with medium weight steel, but is being transferred into heavy steel, and that covers about sixty per cent of the line.

404 Q. What is the weight of the steel?

A. 85 pounds.

405 Q. Does that weight of steel rail when laid upon good foundation support and sustain very heavy traffic?

A. It takes our heaviest engines.

406 Q. What is the character of the freight traffic that is operated by the Burlington Railroad over this line? Is there much through business?

A. There seems to be a good deal of through business. A good deal of transfer.

407 Q. And does that require heavy, long trains?

A. Yes, sir.

128 408 Q. And what is the character of the locomotives used to pull those trains, are they heavy engines or light engines?

A. They are quite heavy engines.

409 Q. Now, Mr. Darrow, the different roads have their own methods of designating their different classes of engines, have they not?

A. Yes, sir.

410 Q. By the use of initials and numerals?

A. Yes, sir.

411 Q. Has there been brought to your attention the fact or the contention that this bridge in question over which the Burlington pulls its freight into Sioux City and receives the west bound freight from Sioux City, is or is not of sufficient sustaining power to sustain the Burlington heavier engines?

A. Yes, sir.

412 Q. Does the Burlington Railroad send its heavy locomotives over the bridge in question?

A. It does not. It does not send the heavier engines across this bridge.

413 Q. Does it send the heavier locomotives used on its line from Ashland to Ferry over this bridge?

A. No, it does not.

414 Q. What is the heaviest class of engines that the Burlington is permitted to haul over this bridge.

A. Class H or K light engines.

415 Q. What is the next engine or locomotive used by 129 the Burlington, and how is it designated; is it the R's?

A. The R engines are the next heavier used on this line.

416 Q. Do you use the D-4 on this line?

A. We do not use the D-4 on this line.

417 Q. You use the R's?

A. Yes, sir.

418 Q. Are you permitted to, and do you send any of the Class R engines over this bridge?

A. No, they cannot go across.

419 Q. They are forbidden to go across?

A. Yes, sir.

420 Q. Now, the testimony discloses that the contracts between the Burlington and the Bridge Company for the use of the bridge in question are for a comparatively short time; they are short term contracts?

A. Yes, sir.

421 Q. Why is that so?

A. They are short term contracts because of the possibility or the need of a heavier bridge at that crossing, and because of the need of handling heavier tonnage directly into the Great Northern yards at Sioux City or vicinity over this *bright* rather than taking the trains across in three or four parts as they are doing at the present time.

422 Q. Do you know whether or not the Burlington has in contemplation the possibility of building its own bridge over the Missouri river into Sioux City?

130 A. It has been contemplated, and soundings for such a bridge have been made.

423 Q. Would it be a bridge of the same type as this bridge if constructed?

A. It would be a bridge of heavier carrying capacity, possibly of about the same length of spans.

424 Q. Now, before the Government took charge of the operation and control of the railroads you may state whether or not the Burlington and the C. St. Paul M. & O., and the North Western—the last two being designated as the North Western lines, were competitors for traffic in the territory they serve?

A. Yes, sir, they were competitive in the territory into which they both entered.

425 Q. And to your knowledge there are very few, if any, contracts for the interchange of business between the North Western and the Burlington?

A. I do not know of many.

426 Q. The circumstances of their locations and ownership, make them competitors rather than to pool together? That is a fact is it not?

A. Yes, sir.

427 Q. Are you familiar in a way with the bridge in controversy, and do you know the type of bridge this Sioux City Bridge is, and what it is constructed of?

A. Yes, sir.

428 Q. Now, how does this bridge in question compare with 131 any of the bridges over the Missouri River within your territory?

A. The Sioux City Bridge was built by the same engineer and at about the same time as our Nebraska City bridge, and is of very similar construction. It is a little longer than the Nebraska City bridge, and a little shorter than our Rulo bridge. The bridge at Rulo Nebraska and Plattsmouth, as the Plattsmouth bridge was originally built, before its reconstruction, were all about alike, they were built by the same engineer.

429 Q. The Plattsmouth bridge is on the main line of the Burlington, or on the Burlington Trunk Line from Chicago to the West?

A. Yes, sir.

430 Q. And how is it at Nebraska City?

A. That is a secondary bridge, it merely connects branches.

431 Q. And how about the Rulo branch?

A. The Rulo branch is on the main line from St. Louis, Kansas City, St. Joseph and the West to Denver and Lincoln.

432 Q. The Burlington has other bridges over the Missouri river than the three you mention?

A. Yes, sir.

433 Q. Where?

A. There is one at Kansas City and one at Bellfontaine, Missouri.

434 Q. Is there one at Hannibal?

132 A. The Hannibal bridge is across the Mississippi river. The Hannibal bridge on the Mississippi is the Hannibal & St. Jos. bridge.

435 Q. And the Burlington has five or six bridges over the Platte river?

A. More than that—yes, sir.

436 Q. And you have several bridges in the Northwest over str-ams?

A. Yes, sir.

437 Q. And have you had under observation those bridges and other bridges built by the Burlington in other locations, and bridges built by other roads?

A. Yes, sir, for many years.

438 Q. Now, has the Burlington found it necessary to rebuild its Kansas City bridge?

A. It recently completed a new bridge.

439 Q. And did it find it necessary to strengthen the Rulo bridge?

A. Yes, sir.

440 Q. And did it find it necessary to rebuild the Plattsmouth bridge?

A. Yes, sir.

441 Q. Why was it necessary that those changes should be made in those structures?

A. The Plattsmouth bridge was made necessary because the bridge was too light for the power that they desired to operate over the bridge and Rulo the same, The Burlington bridge at 133 Kansas City was partly because of the single track, and congestion, and partly because the piers were becoming deteriorated, and mostly because of the increased load on the bridge by the engines, thereby limiting its usefulness.

442 Q. During the past thirty years has there or has there not been a continual increase in the size of the locomotives constructed?

A. Yes, sir.

443 Q. And that has made necessary the laying of heavier steel and the construction of better roadbed?

A. Yes, sir.

444 Q. And all those things have made possible the transportation of freight in long trainloads?

A. Yes, sir.

445 Q. And has it brought about a more economical method of transportation?

A. Yes, sir.

446 Q. Now you may state whether or not in your opinion the bridge in question is a bridge that is up-to-date or is it in any way obsolescent?

A. The Sioux City bridge is thirty years old, and compared with our bridges of similar age, I would say that it is obsolete as an up-to-date traffic carrier.

447 Q. In what particular is it obsolete?

A. It is obsolete in one respect in that it is a single track, although that can be eliminated to a certain extent, but primarily because of the insufficient strength of the truss spans being 134 unable to carry modern loads.

448 Q. Now, in order to make the bridge in question modern so as to fit and become an appropriate part of the lines of railroad it serves, what would be necessary to do?

A. It would be necessary to replace entirely the steel spans with heavier ones.

449 Q. Could that be done so as to permit the laying of a double track?

A. The double track feature would have to be taken care of by some work on the piers. Either entirely new piers or extensions of the present piers to receive the double track trusses.

450 Q. To construct piers in the Missouri river that requires peculiar facilities?

A. Yes, sir.

451 Q. Necessary to sink caissons ?

A. To sink caissons to the rock.

452 Q. And that is done by the use of compressed air?

A. Yes, compressed air.

453 Q. You may state whether or not it would cost—the initial cost to the contractor of moving in, and the cost of moving out would have to be added to the cost of constructing the extension to these piers?

A. Yes, sir.

135 454 Q. And whether that initial cost of moving in and out his equipment would be just as great in making the extension as it would be if he were constructing entirely new piers?

A. Yes, sir.

455 Q. And that is a considerable factor in the charges made by the contractors in such construction?

A. Yes, sir.

456 Q. Could you use any part of the present steel to build a modern bridge on the site of the present one?

A. It would hardly be practicable to do so.

457 Q. Now, you may state whether or not there is any market value for—or any market for second hand bridges or material in second hand bridges? Or is it any better than junk?

A. It is very hard to find a market for spans as long as 400 feet, such as these spans are. The Union Pacific has found a great deal of difficulty in disposing of their 250 foot spans at Omaha recently.

458 Q. It requires special assistance to find a market other than junk for such material?

A. Yes, sir.

459 Q. The material itself, however, is in quite good condition, is it not?

A. Yes, good condition.

460 Q. Now, if the Burlington should build a new bridge itself, it of course under the law would be compelled to admit other roads to its use on reasonable conditions and terms?

136 A. That is usually the way.

461 Q. That is true of all the bridges over these interstate streams, is it not, of the Missouri and the Mississippi river?

A. As far as I know.

462 Q. If the Burlington would put up and construct, as it may if its lines get back into the control of its owners, a modern double track bridge over the Missouri river near the site of the bridge in controversy, the Burlington would not from this forward use the present bridge?

A. Very likely not.

463 Q. Did you make any calculations so as to form a judgment as to the percentage of the depreciation in value of the present bridge on its original cost growing out of these features of age and obsolescence? The question is whether you have?

A. I have not in detail.

464 Q. Have you a judgment so that you can express a reasonable opinion as to that percentage of depreciation?

A. My judgment would be based on my experience at Plattsmouth where we disposed of spans that were 23 years old for 28 per cent of their cost, and it cost us .50 per cent of the 28 per cent to get the old spans ready to ship, so that the depreciation would be about 86 per cent.

465 Q. Of the superstructure?

A. Due to obsolescence of the trusses.

137 466 Q. That does not apply to the piers?

A. No, sir.

467 Q. What would be a reasonable deduction in dollars and cents assuming that the bridge proper cost \$950,000. thirty-one years ago, what would be a reasonable deduction in dollars and cents from that amount, for the fact that the bridge is now out of date and thirty-one years of age?

A. I would say not less than \$300,000.00.

468 Q. There is no market for second hand bridges?

A. No, sir.

Q. And you cannot sell them on the market?

A. It is very difficult to sell them at any price, except for junk.

469 Q. You had charge of the re-construction of the Plattsmouth bridge?

A. I was engineer on that work.

470 Q. Mr. Darrow, does it becomes necessary at times to construct protection work on the banks of the Missouri river at points some distance from the bridge itself in order to prevent the shifting of the channel so as to endanger or injure the bridge?

A. Yes, sir, it is frequently necessary in order to save the bridge.

471 Q. Has that been your experience with the bridges under your supervision?

A. Steadily; constantly, yes, sir.

138 472 Q. The Missouri river is a hard river to control?

A. Yes, sir, very hard.

473 Q. Can you give us some idea of what it costs to protect the Plattsmouth bridge?

A. Some years we spend \$2,000.00 and some years we spend \$150,000. We have just finished up some work at Rulo at which place during the last 18 months we spent in the neighborhood of \$40,000.

474 Q. Has the Burlington road expended considerable money to prevent inroads by the Missouri river up near Folsom, where it threatened the north and south line? I refer to the station of Folsom, Iowa?

A. Yes, sir.

475 Q. How much did it expend there?

A. I presume half a million would not begin to cover it.

476 Q. And that was for the purpose of protecting about how much track in length?

A. About half a mile—a mile.

477 Q. And why didn't you move the track? Or couldn't you do it on account of conditions, or a hill?

A. There is a hill right close there.

478 Q. A bluff?

A. Yes, sir, we cannot move several miles of line, thereby making several bridges useless.

479 Q. Then you may state whether or not that is an element of more or less uncertainty—a factor that is not certain, and yet it exists to a greater or less extent in the proposition of the cost
139 of maintaining these bridges over the Missouri river?

A. It is an element of uncertainty, yes, sir, and it is constantly arising.

480 Q. And these conditions are sometimes created quite suddenly?

A. Yes, sir.

481 Q. You may state whether or not that in your judgment is an element that should be taken into consideration in ascertaining the marketability of a bridge over the Missouri river?

A. Yes, sir, it seems to be an important element to be considered.

482 Q. Now, is new construction—new railroad construction—that is, has there been any rule in past years of the executive officers of the Burlington concerning what such new construction ought to be for a short time, a few years, in order to justify extension of the lines, or extension of improvements?

A. Well, I think so,

483 Q. About what is that? What has been the rule?

A. The last three years we have been told not to ask for improvements that we could not show from 15 to 20 per cent on our estimated cost.

484 Q. Of return?

A. Yes, sir.

485 Q. It is a fact, is it not, Mr. Darrow, that there are
140 elements of uncertainty as to the value of all these things, and that heavy investments for railroad purposes sometimes are disastrous, and turn out to yield no profit whatever?

A. Yes, sir, and very often changes in conditions and methods of operation render an improvement obsolete before it is very many years old.

486 Q. And long before its life or usefulness otherwise expires?

A. Yes, sir.

Cross-examination.

Questions by Mr. Geo. W. Leamer:

487 Q. How heavy are the engines that you call the H engine?

A. H engines weigh about 33,000 pounds.

488 Q. And the K type?

A. The K's weigh about—there are three or four classes of each, but they are about the same—slightly heavier; I will say about 1,200 or 1,500 pounds heavier.

489 Q. Those two engines can go across the bridge?

A. Yes, sir.

490 Q. The R's cannot?

A. The R's cannot.

491 Q. What is their weight?

A. The R-4 I think weigh- 51,000 pounds on the axle.

— Q. Mr. Darrow did you make an investigation of this bridge—the Sioux City bridge?

141 A. I have not made a close investigation of it. I have been over it a number of times and looked at it.

492 Q. You do not know how much it has actually depreciated?

A. Not by a close investigation, no, sir.

493 Q. Did you hear Mr. Dressler read Mr. Reddinghouse's deposition here where he said that physically the bridge had not depreciated, hardly at all?

A. I heard it read.

494 Q. Is that your opinion, too, of the bridge?

A. Judging by our bridges at Rulo and Nebraska City, which were built the same year, or within a year of the time of this one, and knowing their condition I would say that that is correct, that there is very little physical depreciation.

495 Q. Then the bridge now is about as good as it was thirty years ago?

A. Physically, yes, sir, except as he called your attention to the salt water, brine from refrigerator cars which is a trouble worthy of consideration wherever it occurs.

496 Q. That would be a small trouble?

A. That touches only the floor system.

497 Q. If this bridge cost \$950,000.00 and was built 31 years ago, what would it cost to build it today?

A. Well, that is a hard question to answer.

498 Q. Approximately?

142 A. At these present day prices it would be very much higher, although we would have today the benefit of very many improved processes, and such improved machinery, so I would say that the cost would not be anywhere—perhaps fifty per cent greater now.

499 Q. That would make it about \$1,300,000 to \$1,400,000.

A. Practically so.

500 Q. If this bridge cost \$1,022,000, and being built 31 years, including the approaches, you would figure that it would cost about fifty per cent more today?

A. At present day prices.

501 Q. Including the approaches?

A. Yes, sir.

502 Q. You know there are two bridges that cross the Missouri river today, one of them known as the combination Bridge, and this bridge?

A. Yes, sir.

503 Q. The one in question, in this lawsuit?

A. Yes, sir.

504 Q. Being called the high bridge?

A. Yes, sir.

505 Q. Have you made any investigation of the Combination bridge, did you ever look it over?

A. Yes, I investigated it. We used to run our trains over it.

506 Q. What is the fact in regard to the strength of this combination bridge compared with the strength of the high bridge—being the bridge in question?

143 A. My judgment is that the combination bridge is much lighter in carrying capacity, and deficient in present physical condition.

507 Q. Could the combination bridge carry these K engines?

A. They went over it 12 years ago.

508 Q. It is doubtful whether it would carry it today?

A. I think it would be doubtful if we would care to put them on there now, on account of the stresses.

509 Q. The combination bridge would not be suitable for railroad traffic at all?

A. I think not.

510 Q. The only bridge across the Missouri river at Sioux City Iowa that is suitable for railroad traffic would be this bridge in question here, known as the Sioux City Bridge Company's bridge?

A. Yes, sir, the bridge in its present condition.

511 Q. You would not know about the protection of the bridge would you?

A. The Burlington has nothing to do with the maintenance of this bridge.

512 Q. The Burlington has nothing to do with the maintenance of this bridge?

A. No although we have expended some money towards the river bank protection above it.

513 Q. As to the Sioux City bridge?

A. Yes, above the combination bridge, of course looking to the Sioux City bridge being kept in proper service.

144 514 Q. That improvement was made to help the combination bridge instead of the Sioux City bridge?

A. It was for all three. There are four parties in interest in that improvement there.

515 Q. That was the improvement in which Congress appropriated \$60,000 did it not three or four years ago?

A. It seems to me that the total cost was much less than half that. There was only a small amount of work done. Only about a 1,000 feet of bank protection.

516 Q. It was about a mile north of the combination bridge—or west?

A. About a mile west.

Redirect examination.

Question- by Mr. Jesse L. Root:

517 Q. Counsel has asked you what it would cost at present day prices to build—that is, to duplicate the bridge in question. I

will ask you whether or not any sane railroad man would attempt to duplicate that bridge new.

A. I think now.

518 Q. State whether or not if duplicated new it would be a depreciated investment from the outset?

A. Yes, sir.

519 Q. Now, there has been some inquiry about the H and K engines crossing the combination bridge in years gone by, and about the R engines not being permitted to cross the present bridge in controversy. It might be possible to send a lone engine over it?

A. Yes, it could be sent over it at slow speed.

520 Q. Tell the court whether or not there are certain factors of safety that are thought to be imperative in the imposition of certain weights upon a bridge?

A. Freight engines are usually calculated when running at speed to impart an impact or hammer-blow effect to a structure to about 25 per cent of their weight, and all bridges are designed to that end, and there is also added a factor of safety. So that there would be ample provision made for unforeseen difficulties or any undue stresses which may occur, or a combination of stresses. And often we are asked to run a heavy engine over a bridge that is too light for it, which we often do by limiting the speed so that there is no impact, running it slowly, like a person crossing on thin ice, he might cross carefully, where he would not make a practice of going carefully or slowly across.

521 Q. So while it might be possible to move an R engine over the bridge in question, it would not from an engineering standpoint be safe to send it across rapidly, or to have it pull a load, or train of cars?

A. No, it would not be safe for that, or to make a practice of going across.

522 Q. Although they might be able to go across without breaking the bridge?

A. Yes, sir.

146 Recross-examination.

Questions by Mr. George W. Leamer:

523 Q. You said that the railroads would not build a bridge like that today. Would they build a bridge leading into Sioux City of the capacity required for these engines, to carry these engines today? Would they do that today?

A. If they wanted to build a bridge they would build a——

524 Q. From the investors' standpoint and the traffic?

A. I doubt if they would build a bridge at the present state of the labor and steel market, but if they decided to build a bridge regardless of the market they would build a bridge suitable for the heaviest engines that are used and made.

525 Q. With the condition of prices and traffic of the Omaha and Burlington roads, the Burlington would not be justified in

building a bridge now for four or five years across the Missouri river?

A. It would probably want to wait until the market conditions improved. We are going on with other work; we are going on with concrete bridges, and not buying steel bridge for the lines west this year.

526 Q. This would be the only bridge into Sioux City?

A. Yes, sir.

Witness Excused.

147 527. Mr. Dressler: The appellant now offers in evidence the Act of Congress under which the charter for this bridge was granted, and which is marked Exhibit 14.

528. There being no objection said Exhibit 14 is received in evidence, is considered read, and a true copy thereof here follows:

EXHIBIT 14.

148

529. Copy.

Appendix B.

Act of Congress Authorizing Construction of Sioux City Bridge.

An Act Entitled "An Act to Authorize the Construction of a Bridge Across the Missouri River at or Near Sioux City, Iowa."

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that it shall be lawful for the Sioux City Bridge Company, a corporation organized for that purpose under the general corporation laws of the State of Iowa, or its assigns, to construct under and subject to the conditions and limitations hereafter provided, a bridge across the Missouri River at or near Sioux City, Iowa, and lay on and over said bridge railway tracks for the more perfect connection of any and all railways that are now, or near Sioux City and build, erect, and lay on and over said bridge ways for wagons, vehicles of all kinds, and for the transit of animals, and to provide ways for foot passengers, and to keep up and maintain and operate said bridge for the purposes aforesaid; and that when said bridge is constructed all trains of all railroads terminating at said river and on the opposite side thereof, at or near Sioux City, Iowa, shall be allowed to cross said bridge for reasonable compensation, to be made to the owners of the same under the limitations and conditions hereinafter named. The owners of said bridge may also charge and receive reasonable compensation or tolls for the transit over said bridge of all wagons, carriages, vehicles, animals and foot passengers; Provided that Congress may at any time prescribe such rules, regulations and rates of toll for transit and transportation over said bridge as may be deemed proper and reasonable.

Section 2. That any bridge built under the provisions of this Act may at the option of the person or persons or corporation building the same, be built as a draw bridge, with a pivot or other form of draw, or with unbroken or continuous spans. Provided, that if the same shall be made of continuous or unbroken spans, it shall not be in any case, of less elevation than fifty feet above extreme high-water mark, as understood at the point of location, to the lowest part of the superstructure, with straight girders, nor shall the spans of said bridge be less than three hundred feet in the clear at low-water mark; and the piers of said bridge shall be parallel with the current of the river; and the main span shall be over the main channel of the river. And provided also, that if a bridge shall be built under this Act as a draw bridge, the same shall be constructed as a pivot draw bridge, with a draw over the main channel of the river at an accessible and navigable point and with spans of not less than one hundred and sixty feet in length in the clear on each side of the central or pivot pier of the draw; and the next adjoining spans to the draw shall not be less than two hundred and fifty feet, and said spans shall not be less than ten feet above extreme high water mark, measuring to the lowest part of the superstructure of the bridge; and that piers of said bridge shall be parallel with the current of the river: And provided also, That said draw shall be opened promptly upon reasonable signal, without un-necessary delay: And provided further, That the corporation building said bridge may, subject to the approval of the Secretary of War, enter upon the banks of said river, either above or below the point of location of said bridge, and confine the flow of the water to a permanent channel, and to do whatever may be necessary to accomplish said object, but shall not impede or obstruct the navigation of said river, and shall be liable in damages for
149 all injuries to private property; and all plans for such works or erections upon the banks of the river shall first be submitted to the Secretary of War for his approval: And provided further, that if said company shall elect to construct a pile or pontoon bridge in lieu of that described above, the Secretary of War may, if he deem it advisable and not inconsistent with the free navigation of said river, authorize said company to construct such bridge as a pile or pontoon bridge subject to the restrictions and requirements relating to the construction thereof contained in the Act entitled, "An Act to legalize and establish a pontoon bridge across the Mississippi River at Prairie du Chien," approved June sixth, eighteen hundred and seventy-four, except that in the bridge herein authorized one draw only shall be required, which shall not be less than four hundred feet in width in the clear; and provided further, That any bridge built under the provisions of this Act shall be at right angles to the current of the river.

Sec. 3. That no bridge shall be erected or maintained under the authority of this Act which shall at any time substantially or materially obstruct the free navigation of said river; and no bridge shall be commenced or built under this Act until the location

thereof and the plans and specifications for its construction shall have been submitted to, and approved by, the Secretary of War; and any change in the plan of such construction or any alteration in the bridge after its construction shall be subject to the like approval; and whenever such bridge shall, in the opinion of the Secretary of War, substantially obstruct the free navigation of said river, he is hereby authorized to cause such change or alteration of said bridge to be made as will effectually obviate such obstruction; and all such alterations shall be made, and all such obstructions be removed at the expense of the owner or owners of said bridge; and in case any litigation arising from any obstruction or alleged obstruction to the free navigation of Missouri River at or near the crossing of said bridge caused or alleged to be caused thereby, the cause shall be commenced and tried in the district courts of either judicial district in Iowa or Nebraska in which the said bridge or any portion of such obstruction touches.

Sec. 4. That any bridge built under this Act and according to its limitations shall be a lawful structure, and shall be recognized and known as a post route, upon which also no higher charges shall be made for the transportation over the same of the mails, the troops, the munitions of war of the United States than the rate per mile paid for their transportation over the railroads or public highways leading to such cridge.

Such lights shall be kept upon said bridge as the Light House Board shall direct, and said bridge shall moreover be provided with all proper safeguards for the security of person and property.

Sec. 5. That Congress may at any time alter, amend or repeal this Act.

Approved August 15, 1876.

150 H. E. BARLOW, called as a witness in behalf of the appellant, and after being first duly sworn, testified as follows:

Direct examination.

By Mr. Wymer Dressler:

530 Q. State your name?

A. H. E. Barlow.

531 Q. Where do you reside?

A. I live at St. Paul, Minnesota.

532 Q. What is your business?

A. Civil Engineer.

533 Q. How old are you?

A. 38 years.

534 Q. Are you connected with any railroad?

A. Yes, sir.

535 Q. And with which one?

A. The Chicago, St. Paul, Minneapolis & Omaha Railway Company.

536 Q. And what is your relation with it?

A. I am in the engineering department, assistant engineer.

537 Q. Are you familiar with the boundary line of Dakota County and state of Nebraska along that bridge?

A. Yes, sir.

538 Q. Are you familiar with the Sioux City Bridge Company's bridge?

A. Yes, sir.

539 Q. Where is that line?

A. The center line of Pier No. 2; that is the pier separating the west end of the first 400 foot span from the east end.

151 540 Q. Pier No. 2 is the second pier from the east?

A. Yes, sir.

541 Q. And the center of that pier has been regarded as the state line?

A. Yes, sir.

542 Q. Have you made any calculation of the portion of the original cost of the bridge which is properly allotted to that portion of the bridge and approach within the county of Dakota and state of Nebraska?

A. Yes, sir, I have.

543 Q. Will you give us the figures on that?

A. The percentage is about 74 per cent in the state of Nebraska.

544 Q. And the balance is in Iowa?

A. Yes, sir.

545 Q. That is based upon the original cost of the bridge?

A. Yes, sir.

546 Q. And that percentage is based upon what percentage of mileage in the two states?

A. Well, it was not arrived at in that way, taken on a mileage basis—it was arrived at by taking the charges—for instance for the spans that are in Nebraska, the cost of those spans was listed as being in Nebraska, and the same with the other items.

547 Q. So the 74 per cent in Nebraska represents the actual expenditures of the original cost of the structure within Nebraska?

152 A. Yes, sir.

548 Q. Mr. Barlow were you in this court room a few weeks ago, namely on November 11th, 1918?

A. No, sir, I was in St. Paul. That was the day of the signing of the armistice. I remember it distinctly. I was in St. Paul that day.

549 Q. It was November 12th then, the next day?

A. Yes, sir.

550 Q. At that time did you observe the location of the main channel of the Missouri river at the Sioux City bridge?

A. Yes, sir.

551 Q. And did you observe the location of that channel today?

A. I observed the condition of the bridge today, yes, sir.

552 Q. Has there been any change in the condition there?

A. Well, yes, quite a material change. The channel appears to be divided by a sand bar which has formed on the up stream side of

Pier No. 2, so that there is dry land just above Pier No. 2, and water on either side of this sand bar.

553 Q. And that sand bar island has appeared opposite Pier No. 2 and up stream from it since November 12th of this year?

A. Yes, sir.

554 Q. Is that fairly illustrative of the shifting character of the stream at that place?

153 A. Yes, sir.

Cross-examination.

Questions by Mr. George W. Leamer:

555 Q. If the original cost of the bridge was \$1,022,000 what would be the amount that is on the Nebraska side?

A. The percentage is actually 73.8. It is pretty close to 74, and the amount of money chargeable to Nebraska is \$754,689.76, and the balance in Iowa, viz. \$267,665.52.

556 Q. That is on the first cost of the bridge?

A. That is based on a cost of \$1,022,355.28.

Redirect examination.

Questions by Mr. Wymer Dressler:

557 Q. Mr. Barlow, are you familiar with the item which is regarded for practical purposes, and which is included within the original cost mentioned in these rental contracts which is in addition to the figures of the original cost mentioned by the witness Robinson in his deposition?

A. Yes, sir, I know what those items are generally.

558 Q. What are they?

A. The filling of the wooden trestles what formerly existed at both the east and west end of the steel bridge. The trestle on the east end has been entirely filled, and that on the west end had been filled all except about 10 spans I believe.

154 559 Q. And that item represents the difference between the figures of original cost given by Mr. Robinson and this \$1,022,000 which you have just mentioned?

A. Yes, sir.

Recross-examination.

Questions by Mr. Geo. W. Leamer:

560 Q. What per cent would it cost to build that bridge now, on April 1st of this year?

A. Well, that is hard to answer. The prices are abnormal now, both for labor and material, but I think the figure given by Mr. Darrow is probably reasonably correct—fifty per cent greater than the original cost.

Witness excused.

155 THOMAS A. POLLEYS, called as a witness in behalf of the Appellant, and after being first duly sworn, testified as follows:

Direct examination.

By Mr. Wymer Dressler:

561 Q. State your name?

A. Thomas A. Polleys.

562 Q. Where do you live?

A. In Chicago.

563 Q. What is your business?

A. I am tax Commissioner of the Chicago & North Western Railway Company, also of the Chicago, St. Paul, Minneapolis & Omaha Railway Company.

564 Q. Do you hold a similar office with the Sioux City Bridge Company?

A. Yes, sir.

565 Q. How old are you?

A. I am nearly 54 years old.

566 Q. And how long have you been connected with the tax departments of those railroads?

A. Since July 1st, 1903 with the C. St. P. M. & O., and since December 1st, 1915 with the Chicago & North Western.

567 Q. So that you have had fifteen years' experience which have been devoted exclusively to tax matters?

A. Yes, sir.

568 Q. What are your duties, and what is the scope of your work in connection with the tax departments of those roads and companies?

A. Well, of course, one of the chief functions of a tax commissioner is to see that the tax vouchers are properly drawn, and that the extensions and descriptions on each of those vouchers are properly checked, and to see that they are paid—to see that the tax is paid. Another one is to see that the proper arguments are made in the various states before the authorities charged with the duty of placing tax valuations against railroad property, to the end that our property is fairly assessed, and in doing that, of course, the tax commissioner enters into the question of the true value of the property of the companies that he represents; and also into the true value of general property; and the relation between the assessed value of general property and its true value.

569 Q. Have you conducted investigations in Dakota County, Nebraska, during the past 15 years along the lines you suggest?

A. I have, I would wish to qualify that slightly, I did some work in 1904; not to any great extent, but beginning in 1908, I personally conducted the investigations from 1908 to 1915, inclusive, and since 1915 have had that done by others, and the results submitted to me for extensions and use.

570 Q. Now, so as to get a concrete idea on your procedure in the matter of taxes charged against the various properties belonging to

your employer, just state the orderly procedure your office goes through to ascertain the amount you finally pay on a particular tax?

A. Well, in this state our hearings are held only with reference to the taxation of railroad property. Those hearings are usually held early in May. Beginning each year in February sometimes, but usually not until the first of March, we go into a considerable group of Nebraska counties and go to the records of warranty deeds, and also probate appraisals and court deeds in each county. We go through the volumes page by page drawing off the transfers of real estate covered by these warranty deeds or by court deeds, and in addition to that the relatively small number of probate appraisals in your county courts. We take them off on cards, which I have samples of here, or which I have filled out here. These cards are arranged in columns, and with printed heading at the top, for instance the first column being for the date of the instrument of the transfer, the next column is intended for the names of the parties, and the next two narrow columns are headed "Recorded, Volume, Page," and they are intended to show the volume and the page where the instrument is recorded, followed by a column headed "Description", in which we place the particular quarter section, or 40 acres, and the number of the section, and those by the way in rural districts are covered by government townships, and a series of cards was devoted to the transfers within a given government township. Then following that heading comes the column headed

area, under which is posted the number of acres in the transaction. Usually we devote only *line line* to each transfer. Following that comes the column headed "consideration", That data on each line is posted from the data available from the volume of recorded deeds. Then come two columns headed "assessment" which has sub-headings of "total" and "improvements", meaning, in the first column is the total assessed value opposite each parcel and in the last column headed "improvements" we place the improvements assessed against a particular parcel. If there are no improvements we place a tick or line to indicate that it has not been overlooked. These two columns at the right hand side of the card headed assessments are gathered from the assessment rolls in the county clerk's offices in this state. I presume you do not care to go into it in other states. The procedure is much the same. Having posted that transaction in that way, we proceed according to what is called the assessment ratio process.

571 Q. Pursue now a particular tax item which is charged against railroad property, do you send any one, or have any one to check up against the assessors sheets the various items of taxes included within his charge?

A. Well, really, the great bulk of the money we pay is not handled through local assessors at all. It is handled in what we call the general railroad assessment, and this particular assessment here is quite out of the ordinary in the handling of our business. Very little of our railroad property—railroad operating property is subject to taxation in the states I do now

work in subject to taxation by local authorities, as is true in this bridge; so this is quite an exceptional affair. I was going on to say, without pursuing this question of the method as to handling of land sales data, I was going to say that having developed our assessment ratio process, which I can describe later, we then go to the State Board of Equalization of Nebraska at the hearing time, and lay before it what we think is correct data as to the full 100 per cent value of our own property in the state of Nebraska subject to valuation by that board, laying before it at the same time what we think is demonstrated to be the standard of values actually being applied at the time in question to real estate, asking that our property—our operating railroad property be assessed at no higher a percentage of its full 100 per cent value, than is true of real estate in the communities we serve. I say real estate, because real estate is subject to more close investigation than is true of personal property, and furthermore bears from 80 to 85 per cent of all the tax burden in a state like Nebraska.

572 Q. Have you appeared before similar bodies in various states—similar taxing bodies?

160 A. I. have.

573 Q. In what states have you appeared?

Q. Well, you might say Minnesota first, because that is an exception. Minnesota is what we call a gross earnings state. The only state that is now left of the North Western nine in which railroad taxes are paid upon gross earnings basis. There is very little to be done in that state, or in a state of that kind along the line I have described except that at times there are efforts made to raise the rate of gross earnings taxed upon the railroads, and then it is necessary to enter into investigations of this character, and this has been done in Minnesota. In all the other states except North Dakota, entered by the North Western, work of this character has been done.

574 Q. What are those states?

A. I will name them in the order of the mileage: Wisconsin, nearly 2,200 miles of the North Western; Iowa nearly 1,700 miles of North Western; South Dakota about 1,200 miles; Nebraska about 1,100 miles; Illinois about 825 miles; Michigan some 500 miles; Minnesota about 650 miles, and North Dakota just a few miles, about 15 miles.

575 Q. Have you been appearing before the various taxing authorities in those states you mention and conducted the investigations you have described for the last 15 years?

161 A. No, not for 15 years. But I have in Wisconsin, Minnesota, Nebraska, Iowa and South Dakota, in what you call the M. & O. states. I have engaged in work of that kind for nearly 15 years. I have done very little of this work in Minnesota.

576 Q. You have overlooked Wyoming, have you done similar work there?

A. Yes, in Wyoming we have some 280 miles of road.

577 Q. How long have you been familiar with the taxing authorities and the taxing methods in Nebraska, Mr. Polleys.

A. Since 1903 I became tax Commissioner, and 1904 was the first year I really did any work in Nebraska.

578 Q. And your work in Nebraska included Dakota County?

A. Yes, sir.

580 Q. During all these years?

A. Yes, sir, beginning as I say with what you might call intensive work in 1908, and we did some work of this general character in 1904.

579 Q. In your work as Tax Commissioner, and appearing before the various taxing authorities of the various states, have you found that there is a generally accepted method for arriving at the full actual value of taxable property in the various states?

A. So far as real estate is concerned there is, the method that has been followed for many years and used by the Wisconsin Tax Commission and used for many years by Minnesota Tax Commission.

162 581 —. What is that called?

A. It is called the assessment ratio method by some the sales method. The assessment ratio method I think is the more accurate designation.

582 Q. On what is that method based?

A. I have partially described it all in what I have said. You post the various items of sales, posting opposite each sale the amount at which that particular parcel was assessed at the then lowest assessment preceding. Giving gotten your sales *gather* for the period in question, and for the district in question, you simply foot the considerations and opposite that footing set the total of the assessments, dividing the total consideration into the total assessment of the parcels sold and you arrive at what is called the assessment ratio disclosed by the handling of these samples.

583 Q. The percentage of the assessed value for taxing purposes to the actual value?

A. Yes, sir, as disclosed by sales. In the process of handling these sales, if it becomes apparent that certain of them are abnormal or out of proportion they are stricken and are stricken from the data before the footings are made. That often happens.

584 Q. Is that method of arriving at actual values used generally by taxing authorities?

A. It is used by the prominent taxing commissions of the
163 two states I have mentioned, and has been used for fifteen or more years by them, I think it is about 15 years. The state of Michigan used it to some extent, but not so great, and it has been used, and is used by tax commissions and tax authorities in other states, but I am not very familiar with it in other states. I will say, Mr. Dressler, I should explain that a little further. Having arrived at your assessment ratio, which of course is based only upon the relation of assessment to sale price of the particular parcel sold within a district, you then divide that ratio into the total assessed value of all the land within the district, thus arriving at the estimated aggregate value of all the land of all classes, whether sold or unsold lying within that district. The Wisconsin Tax Commission has stated

the assessment ratio plan in something like this language. It is merely an example in the rule of three. As the assessed value of the parcel sold is to their true value, or sale value so is your assessed value of all lands within a district to the estimated true value of all lands in that district.

585 Q. Now, have you conducted investigations in Dakota County for the purpose of determining the relation between the actual value of lands and improvements and personal property to the assessed value as shown by the assessor's books in Dakota County?

A. I have.

164 586 Q. What units have you used? What political units have you used in your investigation?

Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial, and not tending to prove or disprove the true value of the bridge in question.

A. I investigated it from the standpoint of a county as compared with other counties in the state; I mean, Dakota County as compared with now 24 other counties in the state, and of the precinct of Covington within the county as compared with the county, and also the incorporation of South Sioux City has been taken up for separate consideration.

587 Q. Is the property of the Sioux City Bridge Company involved in this case within Covington Precinct in Dakota County?

A. Largely, the remaining portion being within the incorporation of South Sioux City.

588 Q. Now, in making your investigation of real estate assessments, that is sales, what has been the source of your information?

A. The warranty deeds placed of record within Dakota County plus court sales and a few probate appraisals.

589 Q. And your data as to transfers and considerations of transfers has all been taken from the official county records?

A. Yes, sir.

165 590 Q. And what has been the source of your information as to the values of the property taken for assessment purposes for these assessments?

A. The assessment roll of 1916 has been used as the basis of posting against the sales in question. I will say this. We use that assessment against all of the sales for the purposes of this immediate investigation.

591 Q. Are the valuations as shown by the assessment roll of the county assessor for the year 1916—are they the valuations still used for real estate taxation by the assessor?

A. Yes, sir, except to the extent that new structures have been erected or old ones destroyed or removed, and corrections have been made upon the face of the books accordingly.

592 Q. You mean the assessor has corrected his records and kept them up to date to show the new improvements, and therefore the increased value of the various properties?

593 Q. And the law records and the books indicate that various corrections of that kind have been made.

594 Q. You took your data from his official records?

A. Yes, sir.

595 Now, have you compiled this data in form so that it can be tabulated and a statement of it placed in the record?

A. I have. It is not yet in quite that form, but it can
166 easily be put in that form.

596 Q. Will you put it in that form so that we can have it?

A. Yes, sir.

597 Q. Now, you have the data before you, however, have you?

A. Yes, sir, I have this data before me.

Mr. Dressler: It is stipulated between the parties that the data as to transfers and considerations for transfers of property within Dakota County, Covington Precinct and South Sioux City, and the data as to valuations of property for assessment purposes which the witness Tulleys has mentioned, and which he will use in his testimony, are correctly taken from the official records of Dakota County.

598 Mr. Leamer: This stipulation in no way waives the defendant's objection to the relevancy and materiality of the evidence to be offered by the witness as to the true value of the bridge in question. We do not question the accuracy of the witness' figures.

599 Q. Now, Mr. Tulleys, taking first the unit of the county, you may state from the data you have compiled what results you have discovered showing the relation between the actual value of the property in the county and assessed value of that same property for taxation purposes?

600 Mr. Leamer: The respondent objects to the question as being incompetent, irrelevant and immaterial, and in no way tending to prove or disprove the true value of the bridge in question.

167 The objection is overruled.

To which the respondent excepts.

A. Confining myself all the time to real estate I would say that *preceding* in general form with the assessment ratio process as described I have reached the conclusion that the average value per acre of all taxable land in Dakota County as of April 1st, 1918, was \$110.25 per acre.

601 Q. What year?

A. As of April first, 1918. The assessment I refer to is the assessment of 1917, which of course is the same assessment of 1916 and of 1918 except so far as new improvements are concerned or the destruction of old improvements, and the assessment per acre is \$61.40 for the county at large, which represents a ratio of 55.70 per cent of the estimated true value as of April 1, 1918.

602 Q. That is, taking the county as a unit the real estate of the county is—

A. This is acre property.

603 Q. The acre property in the county is assessed at what percentage of its true value?

A. 55.70 per cent.

604 Mr. Leamer: The respondent moves to strike out the answer to the last two questions for the reason that the same is incompetent, irrelevant and immaterial, and not tending to prove or disprove the true value of the bridge in question.

The motion is overruled.

To which the respondent excepts.

168 605 Q. Now, taking Covington Precinct as a unit give us the similar data of real estate?

A. Do you care to have me go into it in detail as to the several processes I used, or the general result?

606 Q. Give us the general result first?

A. I reach the conclusion that the fair market value of the acre property in Covington precinct, including also the—because it is thrown right in with the general precinct property—the acre property as lies within South Sioux City, as of April 1st, 1918 is \$141.00 per acre. The average assessment per acre as shown in this instance from the 1916 assessment with the corrections of 1917 and 1918, is \$80.62 per acre. The ratio of such assessed value per acre, and the estimated average true value being 57.22 per cent.

607 Q. Now, give us the similar data for real estate in the city of South Sioux City within Dakota County?

608 Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial, and not tending to prove or disprove the true value of the bridge in question.

The objection is overruled.

To which the respondent excepts.

A. We have used as our basis of calculation in South Sioux City the sales for the three year period beginning February 15, 1915 and ending February 6, 1918. In other words that is really a period value. I have not sought to augment the period value in

169 order to bring it up to what we might term the current value. It is a statement of the value for the three year period ending in February of this year in which respect it differs somewhat from the acre property values that have been stated. The acre property values assume to speak of values as of April 1, 1918 and not for a period. In that three year period we have 178 transfers divided into 131 of vacant property and 47 of improved property. The total stated consideration in the 178 transfers was \$97,672.00. The total assessment according to the last assessment roll, the total actual value assessment being five times the tax value, was \$53,320.00 which represents for South Sioux City a ratio of 54.59 per cent. Would you care for the ratio for the entire group of counties—some 25—as an illustration?

609 Q. Now, in the beginning of your answer to this last question, and possibly the one before that, you stated that you reached the conclusion so and so. I want to know whether that is merely your conclusion of whether it is the result of the calculations you have made based upon these actual transactions?

A. It is the result of extended calculations.

610 Q. And are these calculations correctly made?

A. They are.

611 Q. So that your statement that it was a conclusion is merely an unfortunate expression?

A. I meant mathematical conclusion.

170 612 Q. You say that you have similar data for twenty-five counties in Nebraska?

A. Yes sir.

613 Q. You may give us the data you have compiled as to those counties?

614 Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial, and not tending to prove or disprove the true value of the bridge in question.

The objection is overruled.

To which the respondent excepts.

A. Shall I do more than state the ratio?

615 Q. It is unnecessary to state more than the ratio between the two values.

616 Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial, and not tending to prove or disprove the true value of the bridge in question.

The objection is overruled.

To which the respondent excepts.

A. The ratios stated are all of as of April 1, 1918. This is the material I filed with the State Board at the time of the hearing in May of this year: Antelope county 45.26 per cent; Boone county 47 per cent; Burt county 56.05 per cent; Butter county 52.87 per cent; Cedar county 51.95 per cent; Clay county 61.34 per cent; Colfax county 57.62 per cent; Cuming county 54.48
171 per cent; Dakota county 55.70 per cent; Dixon county 52.09 per cent; Dodge county 49.35 per cent; Douglas county 47.20 per cent; Holt county 31.85 per cent; Knox county 48.59 per cent; Lancaster county 56.15 per cent; Madison county 51.79 per cent; Nuckolls county 54.19 per cent; Pierce county 49.76 per cent; Platte county 51.37 per cent; Saunders county 54.33 per cent; Stanton county 57.46 per cent; Thurston county 65.01 per cent; Washington county 56.45 per cent; Wayne county 52.75 per cent; York county 60.18 per cent; The average ratio for those 25 counties is 52.34 per cent. In that connection I should also call your attention to the fact that a ratio for these 25 counties developed exclusively from acre sales which were recorded and placed of record from 1917 to 1918 inclusive was only 58.02 per cent. That is the assessed value within those counties, per a ratio of only 58.02 per cent of the prices for acre property established by court sales—meaning those of administrators, guardians, executors, referees, trustees, and also a considerable number of probate sales in the settlement of estates.

617 Q. By court sales you mean sheriff's deeds?

A. Not sheriff's deeds, because that raises a special question. Quite frequently the amount of money paid is only enough to take care of the indebtedness. Sheriffs' deeds are not used.

618 Q. But court sales would represent sales occasionally conducted under the supervision of the probate court?

A. Yes, sir.

619 Q. The court having jurisdiction of the sale?

A. Yes, sir.

620 Q. Returning to Dakota County. Have you made investigation based upon the public records as to the relation between improvements on real estate—I mean the relation between the actual value of improvements on real estate and the assessed value on such improvements?

A. I have made some investigation as to the county at large. Practically not very much as to the county at large. I have practically taken the census figure as to the county at large and I have compared it with the assessed value of buildings within Covington precinct; and I also made some calculations as to the assessed value and the sale value of improvements inside South Sioux City.

621 Q. Taking all of your various calculations there, let me have the calculations that you have made showing the various relationships between actual and assessed values for the different units you may have used—that is political units, the county, the precinct or the city,—for the various classes of property, and just proceed now and give us what you have without further questions?

622 Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial, and not tending to prove or disprove the true value of the bridge in question.

173 The objection is overruled.

To which the respondent excepts.

A. The United States census in 1910 in the bulletin covering Nebraska by counties, reported 787 farms within Dakota county. It is altogether likely that some of these farms had no buildings upon them, but I have not the means of knowing how many. I therefore used the 787 and divide the entire building value reported by the census authorities for farm land in that county, and it gives an average value per farm of buildings of \$2,053.00 as of the year 1910. I am not so sure about that as to whether those figures were as of 1909 or 1910.

623 Q. But they were from the 1910 census reports?

A. In the census of 1910, but I am not so sure that they are for the 1910. It might have been the year 1909. Now as to Covington precinct I find from the latest assessment roll that there were 92 parcels of real estate assessed with buildings thereon. The total assessed value, meaning by that the actual assessed value of those 92 sets of buildings, is \$101,500.00 or \$1,103.00 per parcel.

624 Q. What percentage would that work out based upon the census figures?

625 Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial, and not tending to prove or disprove the true value of the bridge in question.

A. I have not worked it out, but it is slightly over 50 per cent—about 55 per cent. As to South Sioux City we drew off the
174 building assessments by blocks within each addition. That is to say, in Covington, in block 36 we found one building assessment—one lot with a building assessment against it of \$150.00; in block 40, with an aggregate assessment of buildings of \$250.00, and so on. We have summarized them by additions, and have then made a general summary of the entire showing for the city. There are 496 such assessments of parcels having buildings on them on the last assessment roll in South Sioux City, and the total actual value assessment against the same is \$293,220.00, or an average of \$591.17 per parcel.

626 Q. What is the percentage?

627 Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial and not tending to prove or disprove the true value of the bridge in question.

A. That is gotten by some of these calculations to which you refer. The percentage as I divide it from these calculations is—

628 Q. You mean by the ratio process?

A. Yes, sir, except those proceeding to a still greater refinement. You must go through what we call the stripping process to get at how much the buildings sold for. I can explain it in making the building ratio 49.29 per cent—what I call building ratio.

629 Q. So your deduction from the data you have mentioned would be that the improvements in South Sioux City are as-
175 sessed at 49.29 per cent of their average sale value during the last seven years?

A. Yes, sir.

630 Q. That includes everything?

A. Yes, sir.

631 Q. In all the instances that you have mentioned where you have made calculations based upon the data taken from the public records, you may state whether or not you made these calculations accurately?

A. They have been made accurately and verified.

632 Q. Now, have you made any investigation as to the relation of actual value to assessed value for personal property within Dakota County or Covington precinct or South Sioux City or elsewhere?

633 Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial, and not tending to prove or disprove the true value of the bridge in question.

The objection is overruled.

To which the respondent excepts.

A. Yes, sir, to the extent of comparing the general personal property assessment—the last general personal property assessment per capita within South Sioux City with the per capita assessment in other Nebraska places of like population.

634 Q. Your investigation as to personal property has been limited to South Sioux City, and comparing it with other similar places?

A. Yes, sir.

635 Q. You may state what results you obtained in that investigation?

636 Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial, and not tending to prove or disprove the true value of the bridge in question.

The objection is overruled.

To which the respondent excepts.

A. I will say that the calculations as to the South Sioux City personal property assessment per capita for 1918 will needed to be proven by Mr. Miller who verified those calculations. I shall have to accept his figure for my testimony as correct.

637 Q. Assuming that his figures are correct, and we will have him sworn today, you may state what results you obtained?

638 Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial and not tending to prove or disprove the true value of the things in question.

The objection is overruled.

To which the respondent excepts.

A. Mr. Miller's computation to be established, it would be to the effect that the 1918 assessment of personal property in South Sioux City amounts to \$139.00 per capita inside that incorporation—amounts to \$139.00 per capita, using as the estimated population of South Sioux City in 1918 1,565.

639 Q. Is that estimate reasonably correct?

640 Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial and not tending to prove or disprove the true value of the bridge in question.

A. There can be no question about it.

641 Q. I mean as to the population?

A. The estimate as to the population is made by the same process that the census authorities had in getting at estimated populations in years intervening the census dates, namely by scaling from the 1910 population, it being by the same rate of increase that was shown by comparison of 1900 with the 1910 census. It is done by comparison.

642 Q. Now does that per capita valuation compare with personal property or other valuations?

643. Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial and not tending to prove or disprove the true value of the bridge in question.

The objection is overruled.

To which the respondent excepts.

A. The other places are indicated with reference to 1917. That is to say, we have figures for a date one year later in South
178 Sioux City than for the other places. I now have before me a comparative statement, being the 1918 estimated true value of real estate, and 1917 actual assessed value of general personal property in 30 Nebraska cities, having a population of between 1000 and 2000; and the general *prop*ersonal property assessment per capita for each of the places covered by that table, Exhibit 15 for that year, 1917, is as follows:

Albion \$500, Ashland \$399, Atkinson \$393, Bethany Heights \$100, Bloomfield \$236, Clarkson \$271, Clay Center \$294, Creighton \$167, Edgar \$332, Fairfield \$295, Hartington \$439, Harvard \$374, Howells \$349, Humphrey \$476, Madison \$466, Neligh \$236, North Bend \$306, Oakland \$577, Pierce \$342, Plainview \$335, Ponca \$414, Randolph \$343, Stanton \$531, Sutton \$275, Tekamah \$484, Tilden \$266, Valley \$186, Wisner \$520.00, averaging for 28 places two of them being missed in this table, \$351.00.

644 Q. As against South Sioux City of \$139.00?

A. Yes, sir.

Cross-examination.

Questions by Mr. George W. Leamer:

645 Q. Mr. Polleys, there are a great many deeds recorded with the consideration named as one dollar and other consideration?

A. Yes, sir. They are not used.

646 Q. What?

A. They are not used ordinarily, and none have been used
179 in these computations laid before you today. Sometimes we use what we call the indicated consideration gotten since the Federal stamp laws were passed by adding of stated incumbrance the indicated amount of equity paid for by the stamps. That is not true as to any of the work laid before you today.

647 Q. Have you made any investigation as to deeds filed in the last three months?

A. No, sir.

648 Q. You have not?

A. No, sir.

649 Q. Have you made any investigation as to those that have been filed since January first, 1917?

A. Yes, sir. Our period covered to February 6, 1918, the last date that we gathered material here.

650 Q. You have made no investigation of deeds since that time—February 6, 1918?

A. No, sir. In this county.

651 Q. In this county?

A. No.

652 Q. And you base your figures upon deeds that are recorded here which show that the consideration is other than \$1, and other valuable consideration?

A. Yes, sir, warranty deeds, except to the extent of court deeds as I have described, warranty deeds. We do not use quit-claim deeds.

653 Q. Do you know what percent of the deeds that are recorded have the consideration in them one dollar and other valuable consideration?

A. No, I do not, because we are looking for the ones that do state a substantial consideration, and I have not made any investigation as to the proportions.

654 Q. You do not know whether that really was the actual consideration or not, other than what the record shows?

A. As to most of the items, no, but occasionally one we do. I will say this, the amount of stamps of course is a corroborating circumstance in many instances which we scrutinize as we go along.

655 Q. And if the stamp is for more than the consideration you take what the value of the stamp shows—

A. No, I think it is very seldom we do that. In most places they check out pretty well where a substantial consideration is stated. The stamp business comes in for our use in the one dollar deeds, but no one dollar deeds are used in your county as far as Covington and South Sioux City are concerned.

656 Q. If you had found a deed with a one dollar consideration and a \$10.00 revenue stamp on it you would not consider that deed?

A. Not for the purposes of this particular investigation at this time, but we would in our general investigations for the purposes of arriving at those figures for the argument I am speaking of we use that sort of information.

657 Q. Did you use this kind of deeds in arriving at the conclusions as to other counties?

A. Yes, sir.

658 Q. That has been used?

A. Yes, sir.

659 Q. That is, where a deed stated one dollar as the consideration, and it had a \$10.00 revenue stamp on it, you would take into consideration the revenue stamp—what the premium would amount to in the consideration?

A. Yes, sir: we would post it, but if on posting the assessed value against it seemed to be more abnormal and widely apart from the ratio that is general in that community, we might strike it off after having posted before footing it. There are two operations: First posting from any other source the assessment against the consideration. If the ratio indicated as to a given transaction was only 25 per cent ratio in the county, where we know the ratio is 50 per cent or better we would undoubtedly strike off our card that transaction and not put it in at all.

660 Q. Your investigation is not complete with the sales that take place in the counties?

A. Certainly not. The dollar deeds, many of them are excluded, and some others are excluded after we post them.

661 Q. Is it not a fact that about 75 per cent of the deeds are dollar deeds?

182 A. I am unable to really answer that question.

662 Q. Previous to about June first of this year?

A. I cannot state it.

663 Q. You say that in arriving at your percentage in the 25 counties you did not take sheriff's deeds?

A. No, sir, we do not.

664 Q. Why don't you take sheriff's deeds?

A. The Wisconsin Tax Commission—

665 Q. I mean as to Nebraska?

A. One reason we do not take them is because the Wisconsin Tax Board is strenuously against it, and says that they are an under statement in most cases of the value of the property. Sheriff's deeds are as a body, not all but most of them, they distinctly understate the value of the property transferred or sold.

666 Q. Is the land not put up to the highest bidder?

A. Yes, but it does not generally produce the full value of the property. That is the observation of the Wisconsin Tax Commission, and the comment made by them concerning that sort of consideration.

667 Q. You take no deeds that have been put up at public sale and referee sale?

A. No. I am speaking of forced sales.

668 Q. Do you take referee's sales in Nebraska?

A. Yes, sir I do take as many of those as we can get. Occasionally one is eliminated, for the reason that the ratio between the assessment and the stated price is apparently very abnormal

183 at times.

669 Q. Anything that don't look right you eliminate it and do not consider it?

A. It may not look right to me at all, but if the ratio is somewhere within reaching distance of the standard that prevails in that community we leave it in, but if it is abnormal we do not leave it in.

670 Q. But to arrive at this ratio by taking all these deeds together, and figuring out the value of those, and then the value of what the assessor—

A. You will find that a great number of transactions—that the great majority of transactions come pretty close to a certain standard, parcel by parcel.

671 Q. Now as to buildings do I understand that you took the number of buildings as shown by the census of 1910?

A. I took the number of families. The number of buildings is not stated. The number of families is stated, and I used that number of farms in Dakota County to get at the average value of the 787 families, or farms. I know it could not have exceeded 787, and it might have been less. If it was less than 787 the average percentage would have been more than \$2,053.00.

672 Q. And that would have reduced the ratio of assessed to actual value?

A. Yes,

673 Q. You took the ratio as to the whole amount and compared it with the assessed value as to Covington precinct alone?

184 A. Yes, sir. That was as far as I went in that comparison.

674 Q. You did not take the value of Covington precinct alone as returned by the census of 1910?

A. No, it is not available by precincts or townships I think the county is the smallest units you could get on that sort of information from the census, that is as to acre property.

675 Q. Personal property you compared with as per copy, with other cities?

A. Of like population.

676 Q. In this state?

A. Yes, and like population in Nebraska.

677 Q. You don't know anything about what the personal property in Covington precincts was actually assessed at from the individual schedules?

A. No, we know the aggregate of course.

678 Q. You do not know what wheat was assessed at last year in Covington precinct, do you?

A. No, sir, neither as to how much per bushel, or how many bushels were missed.

679 Q. You do not know as to corn?

A. No, sir.

680 Q. Or livestock?

A. No, sir, as to the net prices?

681 Q. Yes?

A. No, I did not.

185 682 Q. Or as to any of these items stated in the schedule here?

A. The aggregate assessment is all that I know of, and as to Covington precinct I have made—in Covington precinct we made no figures as to the rural personal property.

683 Q. And the personal property that you made is as a per cent of the difference assessed as against South Sioux City?

A. Yes, sir.

684 Q. You have no way of showing whether there is more wealth in one town of that population or not?

A. There undoubtedly is a considerable range, but I think not so wide a range as is indicated by the comparison made.

685 Q. You are not acquainted with South Sioux City and the people of the town?

A. No, I have been there a few times, and walked around town, but have ridden through it a good many times of course.

686 Q. You do not know the fact to be that we have in South Sioux City a great many poor people, families of very limited means?

A. I think what is true of South Sioux City is true of many other places lying immediately adjacent to a large town like Sioux City;

that it tends to a reduction of the personal property per capita somewhat, but I would say not to the extent indicated by the assessment values by the South Sioux City authorities.

687 Q. That is just merely your conclusion?

A. Yes, sir, comparing that with *with* many others that are apparently not much better off.

Redirect examination.

Questions by Mr. Wymer Dressler:

688 Q. You may state whether or not this ratio process that you have described, that you have used in these calculations as being in use generally by taxing authorities is regarded as a reasonably accurate process?

689. Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial, as calling for the conclusion of the witness, and further objection as not tending to prove or disprove the true value of the bridge in question.

The objection is overruled.

To which the respondent excepts.

A. It is considered by the tax commissions who use it, and they have stated it broadly as the best device known to them for the determination of aggregate or average values of real estate within given districts.

690 Q. You would say then that that process is an approved process by people who are supposed to be, and are, experts on the subject?

187 691. Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial, and calling for the conclusion of the witness, and not tending to prove or disprove the true value of the bridge in question.

The objection is overruled.

To which the respondent excepts.

A. Yes, sir.

692 Q. I will ask you again whether or not your calculations that you have given us here today are based, so far as the considerations you have used, are concerned, upon the official records of the counties they were taken from?

A. Yes, sir, supplementing that by the remark that as to a moderate number of them we have used the indicated considerations based upon the stamps, but they are also a part of the records.

693 Q. The revenue stamps appearing upon the deeds?

A. Yes, sir, that is only as to a limited proportion of them.

694 Q. And as to the calculations used by you here today, reflecting assessed valuations, you may state whether or not you have taken such data from the official assessment rolls of the county?

A. Sometimes from the tax rolls. You can sometimes get the real estate information from the tax rolls in some of these coun-

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nsh

3/25/08	F. Herman	32	285	W. ½ N. W. ¼
2/28/12	Border/Kolen	33	584	L. 6-9
2/28/12	Koolen/Anderson	33	585	L. 6-9
2/17/12	Sund/Bobier	34	661	N. E. ¼ S. W.
7/15/15	Montgomery/Bodden	35	596	N. E. ¼ S. W.
5/23/11	Blessing/Ebel	35	222	N. W. ¼ S. W.
5/30/17	Boal/Morgan	36	371	Portion S. E. ¼
3/21/17	Jensen/Armstrong	37	194	L. 6-9
8/30/15	Bodden/Randall	37	205	N. E. ¼ S. W.
5/ 2/17	Randall/Salzer	37	211	N. E. ¼ S. W.

Township

12/11/07	Anderson/Andrews	32	61	S. W. ¼ S. E.
2/27/08	F. J. Krieze/Downing	32	88	N. W. ¼ N. W.
2/27/08	J. F. Krieze/Beverly Land Co.	32	89	Lot 4 (S. E. ¼
				S. W. ¼ S. E.
				N. ½ N. E. ¼
3/ 7/08	Favilla-Metz	32	98	S. 30 A. S. E. ¼
1/18/08	M. F. Adair	33	266	S. W. ¼ N. E.
				S. ½ S. E. ¼ N.
2/28/07	H. F. Runge/Bacon .....	..	268	N. E. ¼ N. E.
6/17/08	J. S. Bason	33	301	N. E. ¼ N. E.
10/20/08	H. S. Neighbors	34	79	S. W. ¼ N. E.
				S. ½ S. E. ¼
3/ 8/07	Forbes/Cons'rs Ice Co.	34	276	Lot 1 (¾ int.)
3/20/09	Pierce/Bacon	33	352	N. E. ¼ N. E. ¼
3/ 1/10	Manning/Greene	33	495	S. E. ¼ N. E.
1/13/11	Jay/Kramper	33	495	S. E. ¼ S. E.
5/12/10	Harrington/Lohr	33	556	Lot 8
8/25/11	Stewart Exr./Gilman	34	603	N. ½ N. E. ¼
11/ 6/11	Short/Buckley	34	613	N. W. ¼ N. W.
11/29/11	Hoskins/Traver	34	623	S. E. ¼ S. E. ¼
9/21/12	Gilman/Gilman	35	75	N. ½ N. E. ¼
2/ 2/13	McBride/Lohr	35	154	24 ac. in Lot 5

190

8/12/12	Foye/Lacy	36	11	Lot 8 and accre
4/ 2/12	Jay/Schmidt	33	622	Mtd., ⅓ S. E.
10/ 8/13	Clements (Ref.)/Foley	35	245	N. E. ¼ N. E.
12/ 8/13	West/Ellis	35	331	Lot 1, N. E. ¼
12/15/15	Andrews/Clark	35	568	S. ½ N. ¼ N. E.
				¼ S. E. ¼
3/ 1/16	Metz/Buckley	36	382	S. ½ N. W. ¼
7/ 6/17	Ruahl/Safrienzo	37	253	Pt. Lot 1

188 ties. In this county only from the assessment roll, you can get the details as to building and ground assessment separately.

695 Q. And all such data was taken from the official record?

A. Yes, sir.

696 Mr. Dressler: Subject to the witness handing to the reporter the tabulation we have spoken of in the beginning of his evidence, the appellant offers in evidence said tabulation, same being tabulation of Covington Precinct and South Sioux City, and marked Exhibit 16.

697 Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial, and not tending to prove or disprove the true value of the bridge in question, but no objection is made to the witness sending same to the reporter to be attached hereto.

The objection is overruled.

To which the respondent excepts.

(NOTE.—The witness sent the reporter said tabulation marked Exhibit 16 and here follows:)

Exhibit 16.

(Here follows Exhibit 16, marked pages 189, 190, and 191.)

192 Estimated true value per acre of entire precinct as of Apr
1, 1918, by below processes:

- | | |
|--|-----------|
| (1) Second five-year period value per acre (\$129.95) increased for $2\frac{1}{2}$ years at annual rate of gain shown by comparison of that period value with ten-year period value or \$9.50 per year..... | \$153.70 |
| (2) County average sale price during 10-years \$79.72 per acre, precinct avg. sale price during ten-year period, \$101.16, which is 126.90% of the county avg. Estimated true value per acre of county on April 1, 1918 was \$110.25 multiplied by 129.90%..... | \$139.90 |
| (3) County estimated true value for ten-year period, by complete assessment ratio process, based on assessments of 1908, 1912 & 1916, was \$83.00; Covington precinct estimated true value per acre by the same process and for the same period was \$94.24 or 113.54% of the county average. County estimated average true value per acre April 1, 1918 \$110.25 multiplied by 113.54%..... | 125.10 |
| (4) County assessed value per acre under the 1916 assessment is \$61.40, Covington Precinct \$80.62 per acre or 131.30% of county average. County estimated average true value per acre April 1, 1918, \$110.25 multiplied by 131.30% | 144.70 |
| | 4) 563.50 |
| | \$140.89 |

(5) Composite estimated true value per acre of entire Covington precinct, April 1, 1918, \$140.89; average assessed value per acre under 1916-1918 assessment \$80.62 or 57.22% of the estimated true value.

(Here follows table, lot sales, South Sioux City, marked pages 193-198, inclusive.)

8/28/16	825	600	....
2/21/16	3,000	1,425	1,200
8/25/16	250	175	....
9/11/16	100	50	....
9/18/16	200	100	....
9/21/16	50	20	....
2/29/16	250	300	....
2/29/16	1,275	950	800
7/14/17	220	125	....
	160	40	....
	170	120	....

\$16,895 \$10,745
 63.60%

\$42,128 \$24,815
 58.90%

\$37,009 \$19,855
 53.65%

\$96,032 \$55,415
 [•Word 57.71%

IMP
 ation in 8 assessment to the stated condiser-
 this ratio%. The computation- resulting in
 for the fir morning of Dec. 19th the lot sales

Chic

T. A. POLLEYS.

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199 699 The appellants offer in evidence Exhibit 15, the same being a compilation identified by the witness.

700 Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial, and not tending to prove or disprove the true value of the bridge in question.

The objection is overruled.

To which the respondent excepts.

701 Exhibit 15 is considered read, the same being hereto attached, as follows:

200 702. 1918 Estimated True Value of Real Estate and 1917 Actual Assessed Value of General Personal Property in 30 Nebraska Cities Having a Population Between 1,000 and 2,000.

The real estate values below shown are based upon recent sales and assessments and are computed by the assessment ratio process used by the tax commissions of Wisconsin and Minnesota.

1	Name of place.	1918 estd. population.	No. of tts.	1918 estimated true value of real estate.		Ratio of actual assessed value to estd. true value of real estate.	1917 actual assessed value general per- sonal prop- erty per capita.	Foot-note references.
				Total.	Per capita.			
		2	3	4	5	6	7	8
Albion	1,750	56	1,736,567	992	55.67%	500	A. E.
Ashland	1,410	90	890,749	632	68.75%	399	B.
Atkinson	1,040	34	942,016	905	36.07%	393	D.
Bethany Hts.	1,700	39	1,103,100	649	64.49%	100	B. F.
Bloomfield	1,750	131	1,452,566	830	43.06%	236	D. F.
Clarkson	1,050	33	1,110,068	1,057	49.81%	271	A. D.
Clay Center	1,450	32	752,978	519	62.97%	294	B.
Creighton	1,750	56	1,400,731	800	49.26%	167	D. F.
Edgar	1,115	53	777,499	697	70.72%	332	.....
Emerson	1,020	95	640,936	628	55.93%	...	B.
Fairfield	1,110	51	871,235	784	63.67%	295	.....
Hartington	1,750	92	1,307,613	747	51.72%	439	.....
Harvard	1,285	40	718,065	559	75.31%	374	B. C.
Howells	1,020	33	940,809	922	43.25%	349	D.
Humphreys	1,020	55	978,982	959	54.12%	476	A. E.

Madison	1,890	85	1,668,275	883	63.31%	466	E.
Neligh	1,910	68	1,758,700	920	60.31%	236	F.
North Bend	1,180	61	850,500	721	63.18%	306	.....
Oakland	1,260	83	1,492,731	1,184	62.22%	577	A. E.
Pierce	1,500	117	872,826	581	69.49%	342	B.
Plainview	1,185	110	959,043	809	65.95%	335	.....
Ponca	1,000	91	543,000	543	68.62%	414	B.
Randolph	1,370	93	875,211	639	65.33%	343	B.
So. Su. City	1,565	243	1,359,658	870	62.35%	...	.....
Stanton	1,550	78	1,476,140	952	54.06%	531	A. E.
Sutton	1,960	75	1,412,395	720	54.95%	275	.....
Tekamah	1,560	75	1,348,583	864	77.34%	484	C. E.
Tilden	1,275	74	927,394	727	47.81%	266	D.
Valley	1,030	42	492,750	478	62.75%	186	B. F.
Wisner	1,170	122	1,154,347	987	57.40%	520	A. E.
Total	41,625	2,307	32,815,477	788	60.61%	351	.....

Foot Notes.

- (A) Per capita real estate value high—over \$950.00.
- (B) Per capita real estate value low—under \$650.00.
- (C) Real estate assessment ratio high—over 75.00%.
- (D) Real estate assessment ratio low—under 50.00%.
- (E) Personal property assessment per capita high—over \$450.00.
- (F) Personal property assessment per capita low—under \$250.00.

Compliments of T. A. Polleys, Tax Comr. C. & N. W. Ry. Co., Chicago, Ill., May 7, 1918.

201 Recross-examination.

Questions by Mr. Geo. W. Leamer:

703 Q. If a deed showed a consideration of \$50.00 and contained a fifty cent revenue stamp you would consider it five hundred dollars?

A. We do not begin using indicated considerations unless the amount of the stamp and the amount of the incumbrances recited implies a value of at least \$1,500.00. You have in mind the fact that your fifty cent stamp means a split in value of \$500. We use that rule to cut down the margin of possible errors. Suppose the deed recites no incumbrance at all and has a \$1.50 in stamps on it. We then put that deed in as \$1,250. Splitting the difference, between \$1,000.00 and \$1,500.00, and next, if it had a two dollar stamp and no incumbrance recited we would put that in at an indicated consideration of \$1,750, and each step as you go up the percentage of possible error becomes less. At \$5,000 we do not pay much attention to splitting them. From \$5,000 upward we leave them in at the full value—the face value indicated.

704 Q. How many transactions did you take into consideration in the year 1917? for Dakota County in this calculation that you have given us?

A. The Dakota County figures are based upon all of the transactions that I have gathered for ten years past by a process, and amount to 444 transactions of acre property. I can give any county in the calendar year 1917.

202 Questions by Mr. Dressler:

705 Q. That will be included in the tabulation?

A. No. If you would want all of Dakota County it would be large. I understood you wished the information as to Covington Precinct and South Sioux City, if we must file the rest of it it would be considerable.

706 Q. Those two are all we want.

A. All right. In 1917—in the calendar year 1917 we had 40 transfers of acre property scattered through Dakota County that we used. That is part of the 444 transfers during the ten year period.

Questions by Mr. Geo. W. Leamer:

707 Q. 40 transfers?

A. In the calendar year 1917.

708 Q. You mean dated or filed?

A. Dated. Executed according to the date of the instrument. Executed during the year 1917. Some of them were filed in 1918.

709 Q. You do not know how many were filed in 1918?

A. This gives it according to the date of the execution. Many deeds are not recorded for years after they are made. If they get too old we don't put them on the cards at all.

710 Q. How many deeds did you take as to lots in South Sioux City?

A. 178 during the three year period. I can give the number each year if you want it.

203 711 Q. For 1917?

A. For 1917 that splits a little bit different. South Sioux City, we had for the period from February 15, 1915 to March 21, 1916, these are the dates, 48 transfers. For the period from March 21, 1916 to March 27, 1917 we gathered 76 transfers, and for the period of March 27, 1917 to February 6, 1918 we covered 58 transfers.

712 Q. On lots?

A. On lots in South Sioux City.

Witness excused.

204 713 Mr. Dressler: The appellant offers in evidence the transcript of the proceedings had before the Board of Equalization, June 18, 1918, at which meeting the assessment was fixed and raised for the property in question, the transcript being marked Exhibit 17, including the notice of appeal and bond.

714 There being no objection Exhibit 17 is received in evidence, is considered read, and the same here follows:

EXHIBIT 17.

205 715. Matter of the Assessment of S. C. B. C. (Corp).

Dakota City, Nebraska, June 18, 1918.

The Board Equalization for assessments of property within and for Dakota County, Nebraska, met in regular session, at 11 o'clock A. M. Present: O. W. Fisher, Chairman, A. Ira Davis, John Feller, and Geo. Wilkins, County Clerk, J. P. Rockwell, County Assessor, and Geo. W. Learner, County Attorney.

At this time the matter of the Equalization of the Value and Assessment of that part of the bridge crossing the Missouri River and owned by the Sioux City Bridge Company which is taxable in Dakota County, came on for hearing.

Ward Evans, City Attorney for South Sioux City, appeared and asked to have the valuation of said bridge which is commonly known as the "high bridge" raised. William Mueller appeared on behalf of the Sioux City Bridge Company and asked to have the valuation and the assessment of said bridge lowered.

Whereupon the Board orders that the value and assessment of the approach of said bridge be raised from \$150,000.00 to \$200,000.00 and that the valuation and assessment of the bridge proper be raised from \$450,000.00 to \$500,000.00 or the total value and assessment of the bridge and approach be raised from \$600,000.00 to \$700,000.00.

The said Sioux City Bridge Company by William Mueller duly excepts to said order.

[The Board orders that the Clerk notify the officers of the Sioux City Bridge Company that the equalization of the assessment of said Bridge will be taken up before this Board on June 28th, 1918 at 10 o'clock A. M.]*

Board adjourned to meet June 27, 1918.

O. W. FISHER,

Chairman of the Board of Equalization.

Attest:

GEO. WILKINS,
County Clerk.

206 In the Matter of the Increase in the Valuation of THE SIOUX CITY BRIDGE COMPANY for Taxing Purposes.

To the County Clerk of Dakota County, Nebraska, and Clerk of the Board of Equalization of said County:

Notice is hereby given that the Sioux City Bridge Company, a corporation will appeal to the District Court of Dakota County, Nebraska from the action of the Board of Equalization of said County, taken on or about the 1st of July, 1918, raising the valuation of the property of said Company for taxing purposes.

A good and sufficient bond as required by law is herewith tendered and you are requested to make up a transcript of the proceedings and deliver same to the undersigned.

Dated this 16th day of July, 1918.

SIOUX CITY BRIDGE COMPANY,
A Corporation,

By BYRON CLARK,
WYMER DRESSLER,

Filed July 17, 1918.

GEO. WILKINS,
County Clerk of Dakota County, Nebr.

Bond.

In the Matter of the Increase in the Valuation of THE SIOUX CITY BRIDGE COMPANY for Taxing Purposes.

Know all men by these presents:

That the Sioux City Bridge Company, a corporation, as principal, and National Surety Company, a Corporation of the State of New York, as surety, are held and firmly bound unto Dakota County Nebraska, in the penal sum of Five Hundred Dollars (\$500.00) for the payment whereof well and truly to be made unto said Dakota County, we bind ourselves jointly and severally, firmly by these presents.

Yet upon the condition that whereas on the 1st day of July 1918, the Board of Equalization of Dakota County, Nebraska, made an order increasing the valuation of the property of the Sioux City Bridge Company intends to appeal to the District Court of Dakota County, Nebraska, as provided by law.

Now 'herefore in the Sioux City Bridge Company shall prosecute said appeal according to law and shall pay the costs of said appeal if the same may be finally adjudged against it, then this obligation to be void; otherwise to remain in full force and effect.

Dated this 16th day of July, 1918.

[CORPORATION SEAL.] SIOUX CITY BRIDGE COMPANY,
A Corporation.

By BYRON CLARK,
WYMER DRESSLER,
Its Attorneys.

NATIONAL SURETY COMPANY,
By W. H. WHEELER,
Attorney in Fact.

The foregoing bond and surety are hereby approved this 17th day of July, 1918.

GEO. W. WILKINS,
County Clerk, Dakota County, Nebraska.

GEO. W. WILKINS,
Clerk of the Board of Equalization
of County of Dakota.

207 STATE OF NEBRASKA,
Dakota County, ss:

I, Geo. Wilkins, County Clerk and Clerk for the Board of Equalization within and for said County and State, do hereby certify that the foregoing is a true and compared copy of the record of the Board of Equalization for Dakota County, Nebraska, the Notice of Appeal, and Appeal Bond, as shown from the records and files in the office of the County Clerk of Dakota County, Nebraska, which records and files are in my legal custody, as County Clerk of Dakota County, Nebraska.

Witness my hand and official seal this 20th day of July, 1918.
[SEAL.] GEO. WILKINS,

County Clerk and Clerk of the Board of
Equalization for Dakota County, Nebraska.

2664. 11/157. (417.)

Filed July 20, 1918.

GEO. W. WILKINS,
Clerk District Court.

Pd. \$3.25.

208 WILLIAM MUELLER, called as a witness in behalf of the appellant, and after being first duly sworn, testified as follows:

Direct examination.

By Mr. Wymer Dressler:

716 Q. Mr. Mueller, in Mr. Polleys' testimony he stated that the figures from which he made his calculations as to personal property values, both actual and assessed in South Sioux City, were taken from figures which you had taken from the personal property assessment rolls for South Sioux City. You may state whether or not you did that?

A. I took them from the 1918 tax roll in the County Treasurer's office this morning.

717 Q. And did you accurately take those figures from the official records?

A. I did.

718 Q. You may state whether or not the figures which Mr. Polleys used were the accurate figures which you took from the official records?

A. They were.

719 Q. You may state how you arrived at the calculations that Mr. Polleys used in that respect?

720. Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial, and not tending to prove or disprove the true value of the bridge in question.

The objection is overruled.

To which the respondent excepts.

A. On the tax roll Covington Precinct personal property 209 is all thrown in together, including the people residing in South Sioux City. So I first counted the number of assessments in that precinct, finding 554. Two of them were the two bridges. I eliminated them, leaving 552. Then in the column showing the taxes—corporate tax of South Sioux City is indicated, those people who live in South Sioux City. So I counted that were omitted in that column, being 93, indicating those who are in the precinct but not within the city; leaving a balance of 459 in that city.

721 Q. 459 what?

A. 459 assessments. They are all in alphabetical order on the tax roll. Now then, I footed the value column and found a total of \$261,433.00. That is one-fifth of the actual, making the actual \$1,307,165.00. The two bridges are assessed at an aggregate of \$180,000, or five times that, being \$900,000. Deducting that \$900,00- from the \$1,307,165.00 leaves \$407,165.00 as the personal assessment for the precinct excluding the two bridges. Now then the values placed opposite the 93 items in the precinct but not in the said total is \$37,813.00 and five times that makes an actual

value assessment of \$189,065.00. Deducted from the \$407,165.00 leaves a balance of \$218,100.00 as the actual value personal assessment in South Sioux City; and that last named figure divided by the estimated population of 1565 makes the per capita assessment \$139.36. That is the figure Mr. Polleys stated.

722 Q. That is all you have to offer?

A. I believe so.

Cross-examination waived.

Witness excused.

211 H. E. BARLOW, re-called as a witness in behalf of the appellant, having been sworn, testified as follows:

Questions by Mr. Wyner Dressler:

723 Q. Mr. Barlow, it appears in evidence, and it is the fact, that the franchise or right of the Sioux City Bridge Company to build the bridge in question was granted by Act of Congress, and that the location of the bridge in question was selected by the Sioux City Bridge Company and approved by the Secretary of War. Is there anything in the location of the bridge which is of peculiar value?

A. No; it has no more value than a location beyond or adjacent to the present one.

724 Q. Is there any reason that you know of why any one desiring to build a railroad bridge could not procure a franchise from Congress to do so?

A. I have never known of the right being denied. We have had occasion to make application frequently.

725 Q. That being true, what do you say as to whether or not the bridge in question has any franchise value aside from the mere effort and trifling expense of making application and procuring a similar authority from Congress to build a similar bridge?

A. It has no other value.

Cross-examination.

Questions by Geo. W. Leamer:

212 726 Q. That bridge being the only railroad bridge across the Missouri river at Sioux City, Iowa, and the only ingress into Sioux City for railroad traffic would add a value to it?

A. Well, it is useful for the purpose for which it was built. It has no more value than it ever had.

727 Q. It is more valuable today than if there were three or four other railroad bridges there, is it not?

728 Mr. Dressler: Objected to by the appellant as not proper cross-examination, because it is not cross-examination on these matters that the witness was interrogated about. It is a different value entirely. I was speaking of franchise values and he is speaking of economic conditions.

The objection is overruled.

To which the appellant excepts.

A. It is no more valuable than another bridge would be if they had the same traffic arrangements and the same rental.

729 Q. You don't get my question. The bridge there now without another railroad bridge is more valuable than the bridge there with three or four other bridges—railroad bridges?

A. I should think it would depend upon the business done.

730 Q. Considering the business that it has now.

A. Well, in the sense that it dominates the situation it has more value; then it makes it more valuable.

213 731 Q. How much more?

A. I could not say.

732 Q. It would be considerable?

A. I would not venture a guess.

733 The Court: It would depend upon whether the construction of another bridge would tend to detract business from the present bridge?

A. The construction of another bridge would not necessarily do it, provided the same arrangements were in effect as to rents. It might not have any effect at all.

Redirect examination.

Questions by Mr. Wymer Dressler:

734 Q. And it might totally destroy the usefulness of this bridge?

A. Yes, sir.

735 Q. And if it took all of the business this bridge would not have any value except for junk?

A. Yes, less the cost of taking it down.

736 Q. So that the sum of the whole proposition is that the value of this bridge is such value only as is represented by the rental contracts and the payments received under those contracts?

A. That is my opinion.

737 Q. And if the contracts were cancelled by the tenants and not entered into by others that bridge would be junk?

A. Yes, sir.

214 Recross-examination.

Questions by Mr. Geo. W. Leamer:

738 Q. And the fact that if there was another bridge there and took this traffic away, and it would be junk, and that there is not any other railroad bridge there now, and this is the only bridge, makes it more valuable than its actual cost?

739 Mr. Dressler: Objected to by the appellant as being argumentative.

The objection is overruled.

To which the appellant excepts.

A. I do not see that it affects the situation at all, whether there is another bridge there at all or not. The Sioux City Bridge Company has all the business apparently that is not in existence there. There is no reason to suppose it would lose that business by the construction of another bridge of the same type.

740 Q. That bridge is more valuable now than when they could run railroad traffic across the Combination bridge?

744 Mr. Dressler: Objected to by the appellant as being argumentative.

The objection is overruled.

To which the appellant excepts.

A. It earns more by the amount that the Burlington pays to the Sioux City Bridge Company.

742 Q. And that would make it more valuable?

215 A. It makes it that much more valuable, it earns that much more money.

By Mr. Dressler:

743 Q. But the fact that the Act of Congress requires that any railroad desiring to use the bridge may do so withdraws from the owner of the bridge the dominating character that Mr. Leamer has mentioned, does it not, Mr. Barlow?

744 Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial.

The objection is overruled.

To which the respondent excepts.

A. Yes, sir.

By Mr. Leamer:

745 Q. The more traffic you can get across that bridge the more income you have?

A. The more rental, not necessarily the more traffic. The more tenants the bridge company has the greater the revenue. It is simply a matter of each individual road to decide whether it wishes to go across the bridge or the other one.

746 Q. The fact that there is no other railroad bridge on which they can go across would make it more valuable, does it not?

A. There is another railroad bridge, but the Burlington elected to use the Sioux City Bridge Company's bridge in preference
216 to the other one.

747 Q. The evidence showed that that bridge is not fit for railroad traffic?

A. Then the Sioux City Bridge Company is that much better off, according to the amount of additional rental it receives, due to the fact that the Burlington is using it.

748 Q. That would make the bridge more valuable?

Mr. Dressler: Objected to by the appellant as improper cross-examination and argumentative, and immaterial.

The objection is sustained.

To which the respondent excepts.

A. It makes its income greater.

Witness excused.

749 The appellant rests.

750 Thereupon the respondent offered and presented the following evidence:

217 751 Mr. Leamer: The respondent offers in evidence Exhibit 13, being the assessment of personal property for the year 1918 of the Sioux City Bridge Company, as identified by the witness Rockwell when on the stand.

752 There being no objection Exhibit 13 is received in evidence, is considered read, and a true copy thereof here follows:

Exhibit 13, 1918 Assessment.

218

EXHIBIT 13.

1918 Tax Assessment Against Appellant.

(Here follows reproduction Exhibit 13, 1918 tax assessment against appellant, marked page 218.)

Exhibit 13

ASSESSMENT OF
PERSONAL PROPERTY
FOR THE YEAR

8

1919 of Sioux City Bridge Company

Fill in if a
Veteran of
Mexican,
Civil or
Spanish Am-
erican Wars.
Of _____
Company _____
Regiment _____
Enlisted from State of _____
Served in _____
Write in whether Mexican, Civil or
Spanish-American Wars.

War _____
Spanish-American Wars.

Covington

Resident or Ward

State if in Village

South Sioux City
Village
Yes
Write in Yes or No

R. F. D.

Post Office Address

County, Nebraska

STATE OF NEBRASKA. } OATH
County, _____
I, the undersigned, being
fully sworn, say that the fore-
going statement and schedule
belonging to me on the first day of July, 1919, and
pertaining to the year ending with a view to taxation or prob-
erty consisting of real estate, personal property and
rights pertaining to manufacturing, and all manufactured articles, whether
on hand or owned by me. In all cases where I have been unable to
exhibit certain classes of property to the auditor, such property I have
fully and fairly described, and its true value as to the quantity or quality of
it has been ascertained by me, and I have sworn that since the first day of April of last
year I have not directly or indirectly converted or exchanged any of my
property temporarily for the purpose of evading the assessment thereof for
taxes, into non-taxable property of acquisition of such kind, or
transmitted the same to any person in any manner for the purpose of
evading the law imposing such taxes, and that my answers to the foregoing in-
terrogatories are true. So help me God.

Owner of Property Sign Here
Subscribed in my presence, and sworn to before me
day of June 1919
This _____
Precinct Assessor.

Sec. 53 of the revenue law provides that the person required to list

County Assessor.

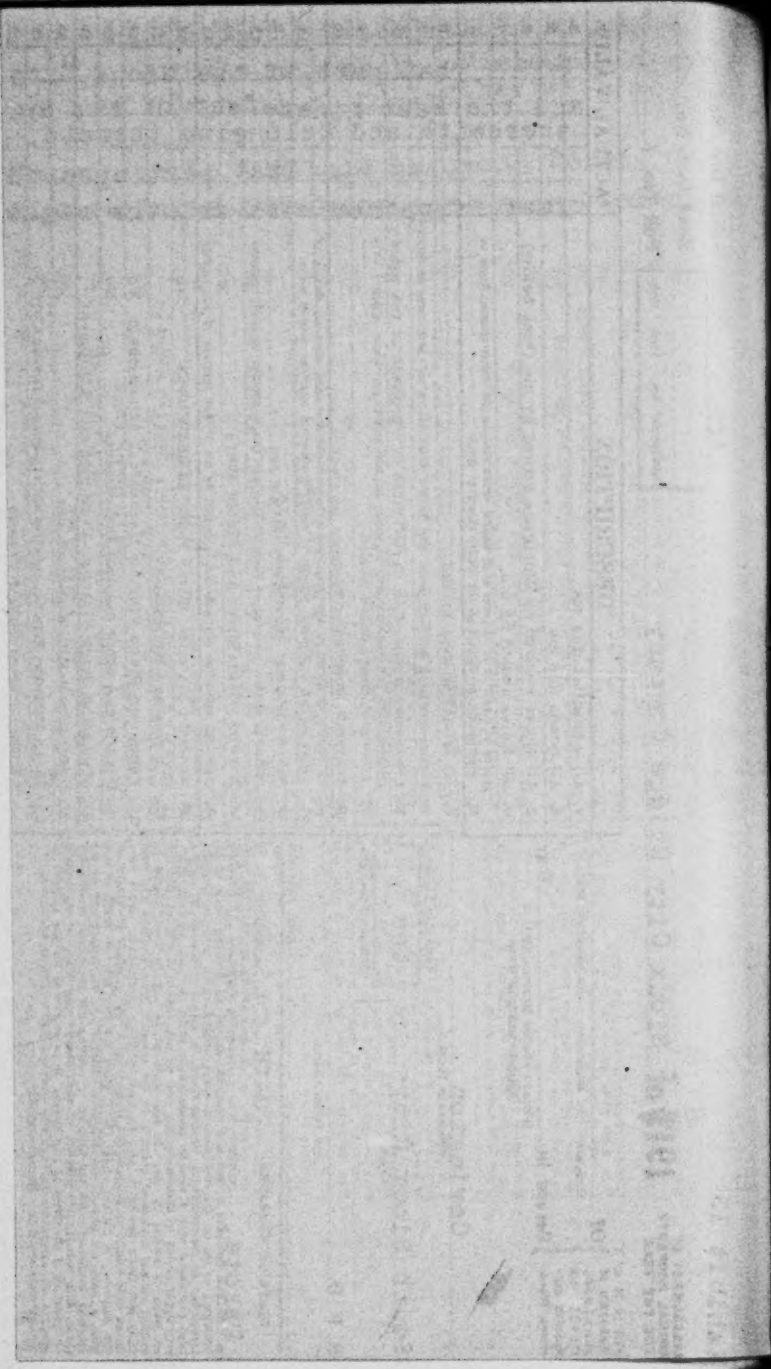
Schedule No. _____ School Dist. No. _____
Road Dist. No. _____
Poll Tax, \$ _____

Age _____

Description	Sec.	Twp.	Rng.

DESCRIPTION	ACTUAL VALUE
1. All Annuities due me	1.
2. All bonds due me	2.
3. All Notes secured by Mortgage owned by me (see below)	3.
4. All Notes secured by me	4.
5. Money on hand or on deposit with banks, trust companies, corporations, firms or individuals, or subject to my order, check or draft	5.
6. All Money loaned by me	6.
7. All Money paid to Building, Loan and Saving Associations or Certificates of Stock	7.
8. All Money invested in Certificates of Purchase at tax sales	8.
9. All Judgments and Allowances in my favor entered in any court and which I have not already entered on this schedule	9.
10. All Book Accounts due me	10.
11. All Shares of Stock in any corporation formed outside state, also all shares of stock in any corporation formed in state, containing business outside state	11.
12. All Credits not otherwise listed	12.
13. Amount of Capital invested by Exterior Men and Grain Brokers in such business	13.
14. Jewelry, Gold, Silver and Plated Ware	14.
15. Diamonds and other valuable stones owned by me or any member of my family	15.
16. No. Gold Watches, Silver Watches and Clocks	16.
17. Pictures and Engravings	17.
18. Piano and Piano Playing Mechanical Attachments	18.
19. Organs and other Musical Instruments	19.
20. Office and Store Fixtures, Furniture and Equipment	20.
21. Sewing and Knitting Machines	21.
22. Billiard, Pooltable, Bagatelle, and other similar tables and Bowling Alloys	22.
23. All Property of Eating Houses	23.
24. Household Effects, Furniture and Library, Use Special "A"	24.
25. Firearms	25.
26. Fire and Burglar Proof Safes	26.
27. Steamboats, Row Boats and other Water Craft	27.

That part of the Sioux City Bridge and the East ninety feet of the approach therewith and belonging thereto, in That part upon the approach



219 754 Mr. Leamer: The respondent offers in evidence Exhibit 18, being the stipulation and attached tariffs of the Chicago, St. Paul, Minneapolis & Omaha Railway Company as to passenger rates and freight rates now in effect.

755 Mr. Dressler: Objected to by the appellant as being irrelevant and immaterial.

The objection is overruled.

To which the appellant excepts.

756 Exhibit 18 is considered read, and the same here follows:

Exhibit 18. Stipulation and Tariffs.

220 757 In the District Court of Dakota County, Nebraska.

In the Matter of the Appeal of the SIOUX CITY BRIDGE COMPANY from the Board of Equalization.

Stipulation.

It is hereby stipulated and agreed between the parties hereto through their respective attorneys that the attached tariffs of the Chicago St. Paul, Minneapolis and Omaha Railway Company may be offered and received in evidence on behalf of either party to prove any fact or thing shown by such tariffs which may be relevant or material, with like force and effect as though said tariffs and each of them had been duly certified as correct by the Interstate Commerce Commission and by the Nebraska State Railway Commission.

Dated this Sixth day of December, 1918.

WYMER DRESSLER,

Attorney for Plaintiff.

GEO. W. LEAMER,

Attorneys for Defendant.

Endorsed: Supreme Court of Nebraska, filed Sep. 22, 1919. H. C. Lindsay, Clerk.

221 ARTHUR G. CLAUSEN, called as a witness in behalf of the respondent, and after being first duly sworn, testified as follows:

Direct examination.

By Mr. George W. Leamer:

758 Q. State your name?

A. Arthur G. Clausen.

759 Q. Where do you live?

A. In South Sioux City.

760 Q. Dakota County, Nebraska?

A. Yes, sir.

761 —. What is your business?

A. I am joint agent, both freight and passenger agent.

762 Q. For what railroads?

A. The Chicago, St. Paul, Minneapolis & Omaha Railway and the Chicago, Burlington & Quincy Railroad.

763 Q. Have you the tariffs for the Chicago, Burlington & Quincy Railroad in effect now as pertaining to the O'Neil and Sioux City line and the Sioux City-Ashland line?

A. Yes, sir, I have for my station in South Sioux City.

764 Q. Have you several?

A. Yes, sir.

(Witness produces and holds in his hands several tariffs.)

765 Q. You have them now with you?

A. Yes, sir.

By Mr. Root:

766 Q. These records, or these tariffs that you have brought here are kept in your office for the purpose of advising the public and yourself of the rates that are charged by the Burlington for traffic moving over its lines?

A. Yes, sir. They are placed in the depot for public inspection.

767 Q. Have you any more copies of these?

A. No, I will have to retain them.

768 Q. You brought these in under a subpoena that the sheriff served on you?

A. Yes, sir.

769 Mr. Root: If there is any information that is contained in these tariffs that counsel want, and the witness can testify to them, we are willing to have it read into the record, as the law requires that these be kept at the station, and they are now Government property and if there is any information that the railroad has that he wants, and he will give us a reasonable opportunity to get it for him we will be glad to do it, but we do not want these made a part of the bill of exceptions, and we do not want them offered so they would go as a part of the bill of exceptions.

770 Mr. Leamer: If the Burlington will furnish a copy I do not care.

771 Mr. Leamer: At this moment I have not the exact information before me, but I will want to offer certain portions of these tariffs affecting the issue in this hearing.

223 772 Mr. Root: I object to these tariffs being identified and being taken out of the possession of the witness.

773 Mr. Leamer: It is stipulated and agreed between the appellant and respondent that the respondent may procure for the record any tariffs of the Chicago, Burlington & Quincy Railroad Company which are now in effect affecting any traffic passing over the bridge in question.

774 Mr. Dressler: But the Sioux City Bridge Company objects to all tariffs of either the Burlington or the Chicago, St. Paul, Min-

neapolis & Omaha Railroads as irrelevant and immaterial on the question of the earning capacity of the bridge.

775 Mr. Root: It is stipulated that the Chicago, Burlington & Quincy Railroad Company has in effect a basing rate for the transfer of passengers from Sioux City Iowa to South Sioux City, Nebraska of 25 cents, and that in selling tickets beyond South Sioux City it used that base rate of 25 cents as part of its charge, but from South Sioux City westerly or southwesterly it charges now under the Government order three cents a mile additional, and before the Government raised the intrastate passenger rates in Nebraska it charged two cents a mile additional, and that is now charges a rate in excess of the 25 cent base rate and the three cents a mile beyond, and that the distance from Sioux City, Iowa to South Sioux City, Nebraska, is a little over 3.8 miles approximately, and
224 that those rates are evidenced by tariffs duly on file in the office of the Interstate Commerce Commission at Washington.

776 Cross-examination waived.

Witness excused.

225 Mr. J. P. ROCKWELL, called as a witness in behalf of the respondent, having been sworn in this hearing, testified as follows:

Direct Examination.

By Mr. George W. Leamer.

777 Q. How long have you been the County Assessor of Dakota County, Nebraska?

A. Two years.

778 Q. I now hand you Exhibit 19 and will ask you what it is?

(Handing the witness 1917 tax assessment of the Bridge Company.)

A. That is the schedule furnished by the Sioux City Bridge Company to me as County Assessor for the year 1917 for the bridge, together with all rights, privileges and franchises connected therewith and belonging thereto. I might read the schedule.

779. Mr. Dressler: It shows for itself.

780. Mr. Leamer: The respondent offers in evidence this tax schedule identified by the witness, marked Exhibit 19, and asks that a copy thereof be substituted for the original.

781. Mr. Dressler: Objected to by the appellant as being immaterial and irrelevant.

The objection is overruled
To which the appellant excepts.

782. Exhibit 19 was considered read, and a true and correct copy thereof here follows:

1917 Tax Assessment of Bridge Company.

(Here follows reproduction of 1917 tax assessment of Bridge Company, marked page 226.)

Schedule No. _____ Age _____ School Dist. No. _____
Road Dist. No. _____ Poll Tax, \$ _____

Description	No.	Type	Rate
Lodge Company			

Omaha, Neb.

Fill in a
 Veteran of
 Mexican,
 Civil or
 Spanish Am-
 erican War.

Of
 Company
 Regiment
 Enlisted from State of

Served in
 War

Utama, Neb.

Coverage of World

South Sioux City,
Village

R. F. D. **Cushman**
Post Office Address

Dakota
COUNTY OF NEBRASKA

STATE OF NEWARK.

I, the undersigned, being duly sworn, depose and swear that certain claims and interests in all property held by or belonging to me on the first day of April, including all personal property pertaining to manufacturing whether held in actual possession or having every appurtenant to manufacturing, and all manufactured articles whether on hand or owned by me, in all cases where I have been unable to exhibit certain claims of property to the assessor, such property has been sold and delivered to the said assessor as to the quantity or quality of the same, and further to withhold the same so as to the quantity or quality of the property. I further swear, that, since the first day of April of last year, I have not directly or indirectly conveyed or exchanged any of my property temporarily for the purpose of securing securities of any kind, or transferred or transmitted the same to any person or in any way for the purpose of evading the payment thereof, and that any amount to the foregoing indebtedness on such day was paid in full.

OATH

County _____

Dated _____

Subscribed and sworn to before me at the City of Newark, New Jersey, this _____ day of _____ A.D. 190____.

Notary Public for New Jersey.

H. L. Whitney, Tax and Acct.
Subscribed in my presence, and sworn to before me
this 25th day of April 1918

Sec. 53 of the revenue law provides that the person required to list property shall answer in writing over his signature and under oath, the following interrogatories:

Interest in money. Any vote, or vote given, on the first day of April of the present year, the executor of the last will, or the administrator of the estate of any deceased person, or the guardian of the estate of any infant, or person of unsound mind, or the trustee of the property of any person, or the receiver of any estate, or the holder of any office, or the attorney, solicitor, or broker inventing, brokering or otherwise controlling the money or the property of any person, or the inventor or accounting officer of any corporation, or a partner, consignee, or warehouseman, or any person connected with any of the foregoing, who was or may be acting under the authority of any particular court name the court and also made to what court you report.

[illegible]

Answer Interrogatory 3. If you have converted any of your money or property or money or property of any other person, as inquired of you, then state when the same was so converted or invested, and the time and amount of sales thereof? **Answer**

Interrogatory 4. Have you, at any time since the first day of April in the preceding year withdrawn from any bank any moneys there deposited for the purpose of converting the same into some form of non-taxable property, or for the purpose of sending the same out of the State, or transferring the same to some other person or persons, with the intent to or purpose of evading the payment of tax on the same?

	Number	Actual Value
Under 1 year	A	
Over 1 yr. & under 2	B	
Over 2 yrs. & under 3	C	
Over 3 yrs. & under 12	D	
Over 12 years	E	
Stallions	F	
All Total Horses		

56.

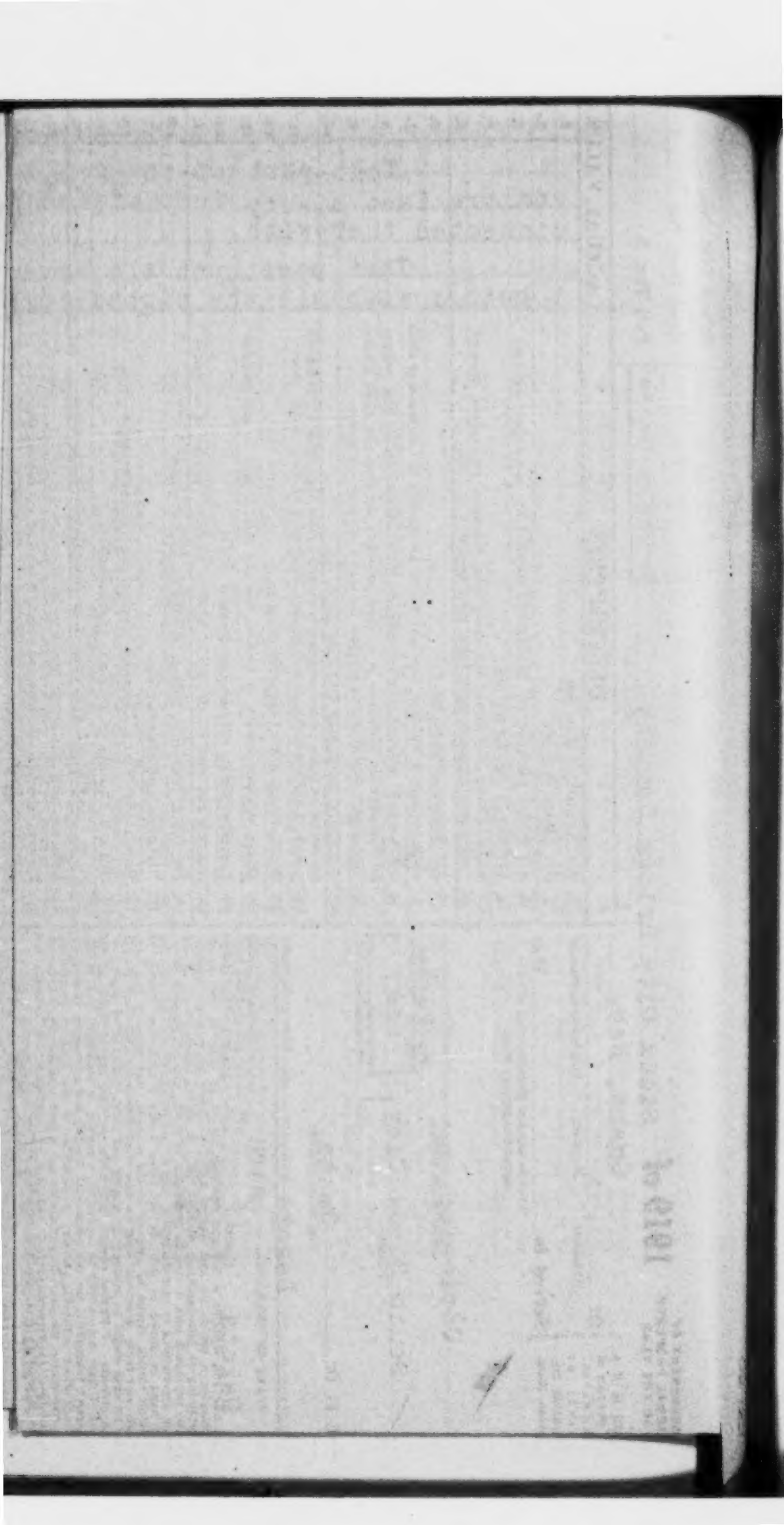
of County Assessor.

6161

days from

module is returnable in.

DESCRIPTION	ACTUAL VALUE
1. All Annuities due me	1.
2. All bonds due me	2.
3. All Notes secured by Mortgage owned by me (see below)	3.
4. All Notes owned by me	4.
5. Money on hand or on deposit with banks, trust companies, corporations, firms or individuals, or subject to my order, check or draft	5.
6. All Money loaned by me	6.
7. All Money paid to Building, Loan and Saving Associations on Certificates of Stock	7.
8. All Money invested in Certificates of Purchase at tax sales	8.
9. All Judgments and Allowances in my favor entered in any court and which I have not already entered on this schedule	9.
10. All Book Accounts due me	10.
11. All Shares of Stock in any corporation turned outside state, also all Shares of Stock in any corporation formed in state, conducting business outside state	11.
12. All Credits not otherwise listed	12.
13. Amount of Capital invested by Elevator Men and Grain Brokers in such business	13.
14. Jewelry, Gold, Silver and Plated Ware	14.
15. Diamonds and other valuable stones owned by me or any member of my family	15.
16. No. Gold Watches, Silver Watches and Clocks	No.
17. Pictures and Engravings	No.
18. Piano and Piano Playing Mechanical Attachments	No.
19. Organs and other Musical Instruments	No.
20. Office and Store Fixtures, Furniture and Equipment	No.
21. Sewing and Knitting Machines	No.
22. Billiard, Pigeonhole, Bagatelle, and other similar tables and Bowling Alloys	No.
23. All Property of Eating Houses	No.
24. Household Effects, Furniture and Library, Use Special "A"	No.
25. Firearms	No.
26. Fire and Burglar Proof Safes	No.
27. Steamboats, Row Boats and other Water Craft	No.
28. Stationary Engines, including Boilers and Gasoline Engines	No.
29. Gasoline and Steam Traction Engines	No.
30. Thrashing Machines and Power Corn Shellers (Hand Corn Shellers list on No. 31)	No.
31. Wagon Scales on leased lands	No.
32. Patent Rights	No.
33. Autos, Make HP 19 Model Register No.	No.
34. Bicycles, Tricycles, Velocipedes, Motorcycles, and kind	No.
35. Manufacturing Tools, Implements and Machinery (other than Engines and Millers, which shall be listed as such) Use Special "G"	No.
36. Agricultural Tools, Implements, and Mach. not otherwise listed Use Special "G"	No.
37. Cream Separators	No.
38. Butter Making Machines driven by steam or gasoline power (hand butter machines list on No. 34)	No.
39. Harness and Saddles	No.
40. Carriages, Wagons, Coaches, Hack, Cabs, Drays or other Vehicles	No.
41. All Nursery Stock	No.
42. All Goods, Merchandise and Manufactured Articles on hand Use Special "G"	No.
43. Typewriting Machines and Adding Machines	No.
44. Typesetting Machines	No.
45. Cameras, Kodaks and Picture Taking Machines	No.
46. Phonographs and Mechanical Musical Instruments	No.
47. Moving Picture Machines	No.
48. Value of Interest in State Lands, Sec. T. R.	No.
49. Improvements on Leased Lands or Homestead, Sec. T. R.	No.
50. Cash Registers	No.
51. Dogs owned or harbored by me	No.
52. Poultry on hand	No. Doz.
53. Hogs of all ages	Av. Wt.
54. Sheep and Goats of all ages	No.
55. Stands of Bees	No.
56. Horses of all ages	No.



227 784 Q. I now *hard* you Exhibit 20, and will ask you what that is?

(Handing the witness tax schedule for year 1916 of Sioux City Bridge Company.)

A. This is a schedule given by the Sioux City Bridge Company to the County Assessor of Dakota County, giving the valuation of the bridge and other things—not to the county assessor but to the precinct assessor, of Covington Precinct.

785 Q. For what year?

A. 1916.

786 Q. That is the schedule returned by the Sioux City Bridge Company?

A. Yes, sir.

787. Mr. Leamer: The respondent offers in evidence Exhibit 20, being the tax schedule just identified.

788. Mr. Dressler: Objected to by the appellant as being irrelevant and immaterial.

The objection is overruled.

To which the appellant excepts.

789. Exhibit 20 was considered read, and a true and correct copy thereof here follows:

EXHIBIT 20.

1916 Schedule of Bridge Assessment.

(Here follows reproduction of 1916 schedule of bridge assessment, marked page 228.)

229 791 Q. Mr. Rockwell, are you acquainted with that the assessors valued hogs at for the assessment for the year 1918, this year, in this county?

A. Yes, sir.

792 Q. How much was it?

A. \$14.00 a hundred pounds.

793 Q. Are you acquainted with the value that they put on other stock and other personal property?

A. Yes, sir.

794 Q. What was the value that they placed on cattle?

A. Well, there was different valuations on cattle. Cattle were assessed according to their age, and for instance, the young stock, yearlings, and two year olds, and three year olds, and over, and fat cattle—there was different rates. I cannot tell you exactly the rates. The yearlings were \$25.00 to \$35.00, the two year olds were from \$35.00 to \$45.00, and the three year olds were from \$45.00 to \$55.00 and cows were from \$60 to \$75, and I have forgotten just what they did figure the fat cattle were, but it seems to me that it was ten cents per pound flat, but I am not sure as to that. I can get that information.

795 Q. You based those values on what the market was at that time?

A. Yes, sir.

796 Q. And what was the wheat valued at?

A. \$2.00 a bushel.

797 Q. And corn?

230 A. \$1.25 per bushel.

798 Q. And oats?

A. Oats at 50 cents per bushel.

799 Q. Was there any reduction made in money that was turned in in the assessment roll?

A. Any reduction?

800 Q. Yes?

A. No.

801 Q. It was turned in at full value of the dollar?

A. Yes, sir. It was turned in at full value.

802 Q. As a matter of fact the assessors assessed all personal property at its actual value, what they thought the actual value was?

A. Yes, that was the intention.

Cross-examination.

Questions by Mr. Wymer Dressler:

803 Q. These Exhibits 19 and 20, those were prepared by the assessor and forwarded to the bridge company for signature, were they not?

A. Yes, sir, 19 and 20 were prepared by the assessor and forwarded to the Bridge Company and signed by them and returned to the county assessor.

804 Q. So the only thing that the bridge company had to do with it was simply to sign it and mail it back? Mail them back?

A. That was all.

231 805 Q. And all the data appearing on the return was made by the assessors themselves?

A. Yes, sir.

806 Q. And the Exhibits 19 and 20 were signed by H. L. Whitney, were they not?

A. Well, I think so.

807 Q. And he lives in Omaha, does he not?

A. Yes, sir.

808 Q. Were you the assessor during the years 1916 and 1917, Mr. Rockwell?

A. I was assessor in 1917 and 1918, but not in the year 1916.

809 Q. You had no conversation or talk with anybody connected with the Bridge Company prior to putting on the return the data which appears there?

A. No sir.

810 Q. It was simply your own conception, and you sent it for signature?

A. That is the amount that had been returned as the valuation of the property, and we simply took it for granted that the property, was worth that much money, that they were willing to have it assessed at that much money, and they made the schedule the same for the next year that they had the year before; and the assessor did the same for the year 1918. That is what they had been returning.

811 Q. Do you or do you not know as a matter of fact that 232 the method of making the return in previous years was the same way, that is, the return would be made up in the assessors office and sent out for signature?

A. I do not know anything about before 1917, but I think that was the method.

812 Q. You speak of certain values per head on livestock you say that valuation was arrived at?

A. Well—

813 Q. Who fixes it, is what I mean?

A. The precinct assessor of the different precincts in the county met in a sort of a convention here at the court house and they went over the personal property and they agreed upon a basis upon which to assess the property.

814 Q. That is for the purpose of getting the assessment uniform throughout the county as to that class of property, is it not?

A. Yes, sir.

815 Q. And there is nothing to prevent—there is nothing in the fact that personal property is uniformly assessed under that method, at so much per head, or so much per bushel, or so much per pound, there is nothing in that to prevent an actual under valuation if the various precinct assessors fail to take into account the proper number of head, or bushels, or pounds, is there?

A. I did not just understand that.

233 816 Q. Here is what I mean. Even if the assessor should fix the proper amount per bushel in wheat according to the prevailing market at the time the assessment is required to be made,

if he took into account all of the wheat which the farmers had there would still result an actual under valuation for assessment purposes, would not there?

A. If the assessor did not do his duty there would be and under valuation.

817 Q. It is still a matter of whether or not the assessor has done his duty, both as to fixing value per animal, or per bushel, or per pound, or whatever the act may be and multiply that by the next number of articles the tax payer may have?

A. Well, I should say that the assessor had done his duty, both he and the party giving in the property—listing the property—both sign an iron clas oath that they are—

818 Q. That does not answer my question, I say, if there is a failure in that respect your uniformity of price fixing might still result in an actual under valuation?

A. Well, you are supposing that—

819 Q. Answer it yes or no. That possible? That is the way it would result?

A. Well, you are putting up a proposition here and want me to say yes or no, and I do not think it is a fair proposition. I send out my assessors, and they go out, and they make a return
234 to me, and they swear to that, and the man that signs the schedule swears to it. Now, I will not come on this stand and say that that assessor has sworn to a lie, now would not like to say that the man who gave in the schedule had sworn to a lie.

820 Q. And also, you have no basis for knowing, and you are not able to swear that those precinct assessors counted all the horses, or all the cattle, or all the wheat or all the oats, can you?

A. No, I could not do that.

821 Q. And if they failed to count all of them there would be an actual under valuation would there not?

A. Yes, if they did not do their duty.

822 Q. I understood you to say that your assessors' meeting or convention fixed the value of horses at \$60 to \$65 a head?

A. No, sir, not horses.

823 Q. What was it?

A. Cattle; cows.

824 Q. What did you fix the value of horses?

A. Well, horses range all the way from—I am not positive about the valuation of these colts, but they ran from, I think from \$40 to \$150, according to the different grades of horses.

825 Q. And that was the valuation agreed upon that year?

A. Yes, sir.

826 Q. How about fat steers?

235 A. Fat steers? I said I was not sure. They were to be assessed by the pound, and I am not sure, and I am under the impression that it was ten cents a pound, but I would not be sure.

827 Q. The precinct assessors never weighed any of the live stock in this county, have they?

A. What?

828 Q. They never weighed any of the livestock to know how many pounds an animal weighed?

A. I do not suppose they did.

829 Q. They assess no cattle under a year old?

A. No.

830 Q. Any hogs under six months old?

A. Wait until I explain that, as to cattle under a year old. There is a place in the schedule where it says, cattle under one year old, cattle more than one and under two, cattle more than two and under three. We are supposed to assess a calf that is weaned. Suppose it had been born in the fall, the first of April it would be really assessable, but a calf that is born the 15th day of March perhaps would not be assessed.

831 Q. It would be legally?

A. It might be possible, but you are getting down to close figures as to just when we ought to assess a calf.

832 Q. Did the assessors assess any pigs under six months of age?

A. No.

236 833 Q. A pig five months old is worth all the way from \$5.00 to \$15.00?

A. They are now.

834 Q. And a calf under a year old may be worth as much as \$40.00 or \$50.00?

A. That is true, too.

835 Q. And there are many thousands of both classes of live stock in this county, and was on the first of April?

A. I did not understand that.

836 Q. There are many thousands of both kinds of live stock in the county?

A. Oh, yes; I can give you the approximate number if you want it, if you will give me time to go to the books. We have them all tabulated and can tell you exactly what they were assessed at, every one of them from chickens to horses and dogs.

837 Q. Then you can give the footings from your personal property assessment roll?

A. Yes, sir. I have got the abstract that will give you the exact number, and their values.

838 Q. Are these schedules that are sent out to the farmers, the personal property schedules, they are yearly sent by mail?

A. No, sir, they are never sent by mail.

839 Q. They are taken by the assessor?

A. The precinct assessor visits the farmer, and they go over the property together and assess it.

237 840 Q. This Exhibit 1, I believe it is, the 1918 schedule, which you sent to the bridge Company, that was sent to the Bridge Company with this increased valuation on it, was it not?

A. No, sir. It was sent to the Bridge Company at the same valuation that was placed on the 1917 assessment roll.

841 Q. But it now has on it the \$100,000 increase?

A. Yes sir, that was added.

842 Q. Put on by the Board of Equalization?

A. Yes sir.

843 Q. And there was never any—the Exhibit 1, however, when sent out from your office, it contained the \$600,000 valuation on it, did it not?

A. Yes, sir.

844 Q. And it was returned because the bridge company refused to acknowledge that the valuation was that much?

A. Well, Mr. Mueller, I rather think, brought the schedule back to me unsigned, and said that he was going to meet with the Board of Equalization and ask that it be reduced. Mr. Mueller had asked me to reduce the assessment, and I did not feel that I ought to do it.

845 Q. And the \$100,000 was added—

A. By the Board of Equalization.

Redirect examination.

Questions by Mr. Geo. W. Leamer:

238 846 Q. The Sioux City Bridge Company has not returned any schedule or list of their property to the precinct assessor, or the county assessor for the year 1918, has it?

847 Mr. Dressler: Objected to by the appellant as calling for the conclusion of the witness.

The objection is overruled.

To which the appellant excepts.

A. No, they have not.

Recross-examination.

Questions by Mr. Wymer Dressler:

848 Q. You knew what the property was?

A. Yes, sir, I knew what the property was.

Q. You yourself placed the items of property on the 1918 return?

A. Yes, sir.

849 Q. And Mr. Mueller, the tax representative of the Bridge Company returned it and brought it back to you personally and objected, not to the items constituting the property but to the valuation which you had placed against it, is not that true?

A. Yes, he objected to the valuation. He said that it should be reduced.

850 Q. He did not object to any of the items of property shown on the return did he?

A. No, he did not object to that.

239 851 Q. He did not deny that the Bridge Company owned all the property that you claimed it did?

A. No, sir.

852 —. But he simply objected to the valuation which you had placed on there?

A. Yes, sir.

853 Q. So that there was a return given to you by Mr. Mueller

which contained what you concede to be all of the property of the Bridge Company in this county, is that true?

A. Yes, but it was not signed by the Bridge Company.

854 Q. But it contained all the items of property?

A. All the items that I knew anything about.

Redirect examination.

Questions by Mr. Leamer:

855 — Mr. Mueller, or did the Sioux City Bridge Company not file with you a list of their property which was signed by the Sioux City Bridge Company?

A. No, sir; that is what I meant by my answer. No, it was not signed, and it is not considered a return until it is signed.

856 Mr. Dressler: You did not consider it such?

A. No.

857 Mr. Leamer: They could have made out another schedule could they not?

A. Sure.

Witness excused.

240 WARD R. EVANS, called as a witness in behalf of the respondent, and after being first duly sworn, testified as follows:

Direct examination.

By Geo. W. Leamer:

858 Q. What is your name?

A. Ward R. Evans.

859 Q. Where do you live?

A. At the present time I live in Sioux City.

860 Q. Sioux City, Iowa?

A. Yes, sir.

861 Q. What official position do you hold in South Sioux City, Nebraska?

A. I was City Attorney, and now I attend to their legal work and business.

862 Q. You are still the attorney for South Sioux City?

A. Yes, sir.

863 Q. Were you present here at the meeting of the Board of Equalization when they took up the matter of the valuation of the bridge across the Missouri river owned by the Sioux City Bridge Company?

A. Yes, sir. I first came before the Board——

864 Mr. Dressler: The appellant objects to that as being incompetent, irrelevant and immaterial, and having been answered.

The objection is sustained.

To which the respondent excepts.

865 Q. Did you file before that board any written complaint?

866 Mr. Dressler: Objected to by the appellant as being
241 incompetent, the transcript of the proceedings of the Board
of Equalization being the best evidence, which has been re-
ceived in this case.

The objection is overruled.
To which the appellant excepts.

A. Yes, sir, I did.

867 Cross-examination waived.
Witness excused.

242 GEORGE WILKINS, called as a witness in behalf of the re-
spondent, and after being first duly sworn, testified as follows:

Direct examination.

By Mr. George W. Leamer:

868 Q. What is your name?

A. George Wilkins.

869 Q. Where do you live?

A. In Dakota City, Nebraska.

870 Q. What official position do you hold in Dakota County?

A. County Clerk, of Dakota County, Nebraska.

871 Q. And are you a member of the Board of Equalization of
Dakota County?

A. Yes, sir.

872 Q. You are its secretary?

A. I presume that is what you call it. Clerk of the Board of
Equalization.

873 Q. Do you recall the date that the Board of Equalization met
in which Ward Evans the City Attorney of South Sioux City ap-
peared before the Board and complained as to the valuation of the
railroad bridge owned by the Sioux City Bridge Company?

874 Mr. Dressler: Objected to by the appellant as assuming some-
thing not in evidence and incompetent and irrelevant and im-
material.

The objection is overruled.
To which the appellant excepts.

A. I do.

875 Q. Did he file a written complaint before that Board?

Mr. Dressler: Objected to by the appellant as being incom-
243 petent and not the best evidence.

The objection is overruled.
To which the appellant excepts.

A. My recollection is that the Mayor of South Sioux City was responsible for the filing of this, I think through Mr. Evans.

876 Mr. Root: The appellant moves to strike the answer out as not responsive to the question, and further as being incompetent.

The motion is overruled.

To which the appellant excepts.

877 Q. Have you that complaint now?

878 Mr. Root: Objected to by the appellant as being incompetent, and assuming facts not proven.

The objection is overruled.

To which the appellant excepts.

A. I am unable to locate it. It is somewhere about the office as far as I know.

879 Q. You have made a search for it?

A. Yes, sir.

880 Q. You cannot locate it?

A. I cannot.

Cross-examination.

Questions by Mr. Wymer Dressler:

881 Q. You never furnished the Sioux City Bridge Company with a copy of any such complaint, did you?

244 A. No, sir.

By Mr. Leamer:

882 Q. Mr. Mueller was here at these meetings or hearings when the complaint was filed?

A. I am not certain, but I believe he was.

Witness excused.

883 The respondent rests.

884 Thereupon the appellant by way of rebuttal offered the following evidence:

245 WILLIAM MUELLER, called as a witness in behalf of the appellant in rebuttal, having been sworn, testified as follows:

Direct examination.

By Mr. Wymer Dressler:

885 Q. Where do you live?

A. At St. Paul.

886 Q. You are the Assistant Tax Commissioner of the Chicago, St. Paul, Minneapolis & Omaha Railway Company?

A. I am.

887 Q. And of the Sioux City Bridge Company?

A. No, I have no official position with them.

888 Q. Are you familiar with, and have you had knowledge of the tax returns for several years past, and know by whom they were signed for the Sioux City Bridge Company?

A. Well, only from hearsay.

889 Q. Well, what do you know about it?

A. Well, I understand that Mr. Whitney at Omaha signed them.

890 Q. Who is he?

A. He is the General Townsite Agent for the Chicago & Northwestern Railway Company, and had handled the assessment matter of the Sioux City Bridge Company for some years past. I know that from his own say-so, and this return that they are here speaking of was sent to Mr. Whitney.

891 Q. Mailed down to him?

A. I think so.

892 Q. And he would sign them and send them back?

246 A. I think so. In this case it was sent by Mr. Whitney to Chicago, and from Chicago to me. That is how I happened to have it.

893 Q. And that was the first time that you were personally responsible for the looking after of the taxes on the bridge property, and the first time you had an opportunity to know what valuation was being placed upon that property for taxing purposes? That was your first opportunity to know what the valuation was?

A. The first I ever had anything to do with the assessment of it, yes, sir, and to look into it.

894 Q. And you immediately refused to recognize the valuation which the assessor had placed upon it?

A. I was instructed to come here and apply for a reduction, yes, sir.

895 Q. Do you know the assessed value per mile of the Burlington Railroad Company, and of the C. St M & O Ry in this county?

896. Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial.

The objection is overruled.

To which the respondent excepts.

A. Yes, sir.

897 Q. Of course it would be the same in Dakota County as elsewhere in the state would it not?

A. The same per mile, except at terminals.

898. Q. What are the different valuations?

247 899. Mr. Leamer: Objected to by the respondent as being incompetent, irrelevant and immaterial.

The objection is overruled.

To which the respondent excepts.

A. For the Omaha Road it is on a valuation of \$42,000 a mile, and for the Burlington it is \$25,875.00 per mile.

Cross-examination.

Questions by Geo. W. Leamer:

900 Q. Do you know how many side tracks the approach to that bridge has?

A. I do not.

901 Q. All the side tracks of that approach of 2.15 in Nebraska, and the bridge itself are all owned by the Bridge Company?

A. I think they are.

902 Q. You do not know how many side tracks there are there?

A. No.

903 Q. You do not know how much mileage—how many miles of side track there are?

A. I do not.

Witness excused.

248 904 Mr. Root: This is all the evidence the appellant has to offer now, and our rest is subject to any showing which may be necessary by the production of the tariffs or rates the county may present with respect to the Burlington.

905 With the reservations stated by the parties hereto in the above proceedings, the trial closed, whereupon the following stipulation was entered into:

906 It is stioulated that the Reporter shall prepare a complete transcript of the evidence offered in the above case, and of the proceedings, and furnish the same to counsel for appellant, and the appellant and respondent will share equally the expense of such transcript, the case to be submitted at a time to be fixed by the court on oral argument, and upon briefs, based upon such transcript.

Endorsed: 21252. Sioux City Bridge Co. v. Dakota County. Bill of Exceptions. Supreme Court of Nebraska. Filed September 22, 1919. H. C. Lindsay, Clerk.

249 & 250 And afterwards, to wit, on September 28, 1919, there was filed in the office of the Clerk of said Supreme Court, a Book of Tariffs marked Exhibit 18, which said original book of tariffs is attached hereto under the stipulation therefor allowed by said Supreme Court on June 6, 1921.

251 And afterwards, to wit, on May 5, 1920, there was filed in the office of the Clerk of said Supreme Court, a certain Stipulation in words and figures following, to wit:

252 In the Supreme Court of the State of Nebraska.

Case No. 21252.

In the Matter of the Appeal of the SIOUX CITY BRIDGE COMPANY
from the Assessment of Its Property in Dakota County for Taxing
Purposes.

It is hereby stipulated and agreed between parties to the above en-
titled action that the appellee may have sixty days additional time to
file its brief in said action.

WYMER DRESSLER,
Attorney for Appellant.
GEO. W. LEAMER,
Attorney for Appellee.

Endorsed: 21252. Sioux City Bridge Co. v. Dakota County. Stip-
ulation. Supreme Court of Nebraska, filed May 5, 1920. H. C.
Lindsay, clerk.

253 And on the same day, to wit, May 5, 1920, there was
rendered by said Supreme Court and entered of record upon
the Journal thereof, a certain Order in the words and figures follow-
ing, to wit:

254 Supreme Court of Nebraska, January Term, A. D. 1920,
May 5.

No. 21252.

SIOUX CITY BRIDGE Co., Appellant,

v.

DAKOTA COUNTY, Appellee.

Appeal from the District Court of Dakota County.

This cause coming on to be heard upon stipulation of parties for
an extension of time within which to serve answer briefs herein,
was submitted to the court; upon due consideration whereof, it is by
the court ordered that said stipulation be, and same hereby is, allowed
and appellee given until May 22, 1920, to serve answer briefs herein.

A. M. MORRISSEY,
Chief Justice.

255 And afterwards, to wit, on December 23, 1920, there was
rendered by said Supreme Court and entered of record upon
the Journal thereof a certain Order in the words and figures fol-
lowing, to wit:

256 Supreme Court of Nebraska, September Term, A. D. 1920,
Dec. 23.

In re Appeal of Sioux City Bridge Co.

No. 21252.

SIoux CITY BRIDGE Co., Appellant,

v.

DAKOTA COUNTY, Appellee.

Appeal from the District Court of Dakota County.

This cause coming on to be heard upon motion of appellant for a continuance herein, was submitted to the court; upon due consideration whereof, it is by the court ordered that said motion be, and same hereby is, sustained and cause continued to the session of court commencing January 17, 1921.

A. M. MORRISSEY,
Chief Justice.

257 And afterwards, to wit, on January 19, 1921, the following among other proceedings were had and done in said Supreme Court, to wit:

Supreme Court of Nebraska, January Term, A. D. 1921, Jan. 19.

The following causes were argued by counsel and submitted to the Court:

No. 21252, Sioux City Bridge Co. v. Dakota County. Appeal from Dakota County.

A. M. MORRISSEY,
Chief Justice.

258 And afterwards, to wit, on March 25, 1921, there was rendered by said Supreme Court and entered of record upon the Journal thereof, a certain Judgment in the words and figures following, to wit:

Supreme Court of Nebraska, January Term, A. D. 1921, March 25.
No. 21252.

In re Appeal of Sioux City Bridge Co.

SIOUX CITY BRIDGE CO., Appellant,

v.

DAKOTA COUNTY, Appellee.

Appeal from the District Court of Dakota County.

This cause coming on to be heard upon appeal from the district court of Dakota county, was argued by counsel and submitted to the court; upon due consideration whereof, the court finds no error apparent in the record of the proceedings and judgment of said district court. It is, therefore, ordered and adjudged that said judgment of the district court be, and same hereby is, affirmed at the cost of appellant, taxed at \$—; for all of which execution is hereby awarded, and that a mandate issue accordingly.

Opinion by Day, J.

A. M. MORRISSEY,
Chief Justice.

259 And on the same day there was filed in the office of the Clerk of said Supreme Court, a certain Opinion by said Court, pursuant to which the preceding Judgment was entered, which Opinion is in the words and figures following, to wit:

260

No. 21252.

SIOUX CITY BRIDGE CO.

v.

DAKOTA COUNTY.

Opinion.

Filed March 25, 1921.

1. In determining the true value of a bridge under the provisions of section 6365, Rev. St. 1913, for taxation purposes, all the elements which go to make up value should be considered. Generally these are the cost of construction, the life of the structure, depreciation, cost of reproduction, net earnings, value of stock and bonds, and, while none of these elements are controlling, each has its proper bearing upon the ultimate question of true value.

2. "The findings of a board of equalization must be so manifestly wrong that reasonable minds could not differ thereon before this court will disturb them." Woods v. Lincoln Gas & Electric Light Co., 74 Neb. 526.

261 3. Where property is assessed for taxation at its true value, and other property in the district is assessed at 55 per cent. of its true value, the remedy, to secure equal taxation is to have the property assessed below its true value raised, rather than to have the property assessed at its true value reduced. Section 6300, Rev. St. 1913, contemplates that all property be assessed at its true value.

4. Evidence examined and held to sustain the judgment of the district court.

262 DAY, J.:

This is an appeal to review the judgment of the district court for Dakota county affirming the action of the board of equalization of that county in assessing the value of the property of the Sioux City Bridge Company for the year 1918 at \$700,000. It appears that the Sioux City Bridge Company, hereinafter designated the appellant, was in 1918, and had been for a great many years prior thereto, the owner of a steel bridge spanning the Missouri river near the city of Sioux City, Iowa. This bridge with its necessary approaches was so situated that, based upon the original cost of construction, 73.8 per cent. thereof was within Dakota county and the remainder in the state of Iowa. The bridge was designed and constructed for the use of railroad traffic only. The total length of the bridge and approaches was 3.88 miles, the bridge proper being 1,800 feet long. For several years prior to 1918 that portion of appellant's property situated within Dakota county had been returned by its officer for taxation purposes at a valuation of \$600,000. In the spring of 1918 the assessor of Dakota county made out a tax schedule in which he listed the appellant's property at \$600,000 and mailed the same to appellant for its signature. Appellant refused to sign the schedule as thus made out and returned the same to the assessor with a protest that the valuation named by him was too high. The assessor declined to reduce the valuation and thereupon made an entry in his books placing the valuation of the property at

263 \$600,000. Objections were filed to this assessment with the board of equalization and a hearing had thereon. At the conclusion of the hearing before the board of equalization, which appears to have been very informal, the valuation was fixed by the board at \$700,000. On appeal from the order of the board of equalization the trial court affirmed its action and fixed the valuation at \$700,000. It is insistently urged by the appellant that the valuation of \$700,000 is excessive and should be reduced.

Section 6364, Rev. St. 1913, relating to the valuation of property of this character, provides, in substance, that any person or corporation owning or operating a railroad bridge independent of a rail-

road system, over any stream or river forming the boundary line between this and any other State, shall be required to list the same for taxation, and that the same shall be assessed and taxed at its true value in money as personal property. In arriving at one-fifth of the value, if such bridge is constructed over a navigable stream, the value of the same to the center of the channel of such stream, together with all rights, privileges and franchises connected therewith, shall be taken into consideration in ascertaining the true value of such bridge property for taxation.

The testimony shows that the bridge, including the approaches, was constructed 30 years ago at a total cost of \$1,022,355.28; that it has been kept in good repair; but it is also shown that it is not the type of construction required to meet the demands of
264 modern railroading; that the spans are not strong enough to permit the larger type of locomotives to be operated over it, nor to permit the use of "double-headed" trains unless 5 cars are placed between the locomotives. It is also shown that the modern tendency in railroading is the use of heavier locomotives and trains. Its construction accommodates but a single track.

One of the witnesses places the depreciation at approximately \$200,000. On this basis the portion of the bridge taxable in Dakota county would be approximately \$606,900. Another witness places the value of the entire structure for investment purposes at 70 per cent of its original cost, or \$715,648. On this basis the portion in Nebraska would be valued at \$528,148. Still another places the depreciation at \$300,000, which would mean that the Dakota county portion was worth \$533,098. The experts agree that to reconstruct such a bridge the cost would be increased approximately 50 per cent, and all agree that it would be an economic mistake to attempt to reconstruct or remodel it so as to meet the present requirements of railroad business. The testimony shows that the life of this structure is, for the steel work approximately 70 years, and for the masonry 100 years.

The record shows that, beginning in 1907, the bridge was leased to two railroads at a combined rental of 8 per cent upon the
265 original total cost of construction, the yearly rental being \$81,788.42. In addition to this annual rental, the lessees pay the taxes and also a flat sum of \$10,000 per annum to keep up repairs and meet depreciation. It also appears that the net earnings of the bridge for the period from June 1, 1896, to November 1, 1907, was \$1,814,591.55, or an average yearly — of \$160,150 for that period. What the income may have been from the time the bridge was constructed to June 1, 1896, does not appear.

It is difficult to lay down any hard and fast rule for the determination of the value of such structures for the purpose of taxation. All of the elements which go to make up value should be considered. Generally speaking the cost of construction, the life of the structure, depreciation, cost of reproduction, net earnings, value of stocks and bonds on the market are items which are considered. None of these elements is controlling, but each has its proper bearing upon the ultimate question of true value, so that in the end the question

of value must rest in the sound judgment of the tribunal passing upon the question giving to the several elements their proper weight.

It will be noted that there is a very wide difference between the value of the property as fixed by the witnesses and the value as found by the board of equalization and subsequently approved by the trial court. The perplexing problem, as we view it, is as to the weight to be given to the earning of the property as bearing upon the ultimate question of the true value.

It must also be borne in mind that the rule is now established in this jurisdiction that the findings of the board of equalization, on the question of value, will not be disturbed unless they be so manifestly wrong that reasonable minds could not differ thereon. *Woods v. Lincoln Gas & Electric Light Co.*, 74 Neb. 526.

Notwithstanding that the bridge may be somewhat obsolescent, in the light of present day demands, a fair analysis of the testimony indicates that in the past the owners of the property have not only received a fair interest return upon the investment, but have also received the larger part, if not all, of the original amount expended, and are still receiving a fair interest upon the original costs. In this connection it is urged by appellant that the type of the structure is such as to invite the competition of a modern, up-to-date bridge, and that when that time comes the present bridge will be practically worthless. It would seem a sufficient answer to this suggestion that the new bridge has not yet been constructed, the present one is still enjoying a fair return on the investment, and when the present bridge ceases to be earning a fair return on its value, the taxing authorities will no doubt give the new conditions their proper consideration. Upon a consideration of all the elements which go to make up value, we are of the view that the finding of the board of equalization is not so manifestly wrong that we are justified in disturbing it.

It is finally urged that this court should reduce the true value of the bridge as found by the court to 55 per cent of such value, for the reason that other property in the district is assessed at 55 per cent of its true value, and that it would be manifestly unjust to appellant to assess its property at its true value while other property in the district is assessed at 55 per cent of its value.

While undoubtedly the law contemplates that there should be equality in taxation, we are of the view that the plan of equalization proposed by appellant is not the proper remedy. The rule is now settled by a recent decision of this court that when property is assessed at its true value, and other property in the district is assessed below its true value, the proper remedy is to have the property assessed below its true value raised, rather than to have property assessed at its true value reduced. *Lincoln Telephone & Telegraph Co. v. Johnson County*, 102 Neb. 254. In the argument of appellant the soundness of this ruling is assailed, and authorities in other jurisdictions are cited which seem at variance with our holding. We are not willing, however, to recede from the rule of that case.

It follows from what has been said that the judgment of the district court should be, and it hereby is, affirmed.

268 And afterwards, to wit, on April 12, 1921, the said appellant, Sioux City Bridge Company, filed a Motion for a Rehearing, as provided by the rules of said Supreme Court, in the words and figures following, to wit:

269 In the Supreme Court of the State of Nebraska.

No. 21252.

SIOUX CITY BRIDGE COMPANY Appellant,

vs.

DAKOTA COUNTY, NEBRASKA, Appellee.

Motion for Rehearing.

Comes now Sioux City Bridge Company, Appellant herein, and moves the court that the Judgment of affirmance heretofore rendered in this cause be vacated and set aside and a rehearing granted for the following reasons:

1. The finding and opinion of the Supreme Court confesses that the property of appellant has been assessed at least 100 per cent of its actual value, while the property of all other persons in said County is assessed at not exceeding 55 per cent of actual value, and the Court practically admits in its opinion that such situation is in violation of the Provisions of Section 1, Article 9 of the Constitution of Nebraska, but holds that the remedy of Appellant is to use its best endeavors to have the taxing officials act honestly with reference to the property of other persons, and appellant says that said holding and decision are erroneous and deprive appellant of its property without due process of law and deny to appellant equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States.

2. The evidence was insufficient to sustain the decree of the District Court and is insufficient to sustain the judgment of this Court fixing the valuation of appellant's property at \$700,000.00 for taxing purposes in Dakota County.

270 3. The Court in its opinion practically holds that the course of dealing in prior years whereby the valuation of the bridge had been fixed at \$600,000.00 without complaint is sufficient evidence to sustain the valuation of \$700,000.00 for the year in controversy, but denies the possibility and even probability that the construction of a modern bridge may render the present bridge worthless at any time. This method of reasoning is illogical and is not supported by plain principles of equity, and is contrary to law.

Wherefore, Appellant prays that a rehearing be granted in this case to the end that justice and equity may be done.

SIoux CITY BRIDGE COMPANY,
By JESSE L. ROOT,
WYMER DRESSLER,
Its Attorneys.

Endorsed: In the Supreme Court of the State of Nebraska. No. 21252. In the matter of the appeal of the Sioux City Bridge Company from the assessment of its property in Dakota county for taxing purposes. Motion for rehearing. Jesse L. Root, Wymer Dressler, attorneys for appellant.

271 And afterwards, to wit, on May 14, 1921, there was rendered by said Supreme Court and entered of record upon the Journal thereof, a certain Judgment and Order overruling the said motion for a rehearing, which Judgment and Order is in the words and figures following, to wit:

Supreme Court of Nebraska, January Term, A. D. 1921, May 14.

No. 21252.

In re Appeal of Sioux City Bridge Co.

SIoux CITY BRIDGE Co., Appellant,

v.

DAKOTA COUNTY, Appellee.

Appeal from the District Court of Dakota County.

This cause coming on to be heard upon motion of appellant for a rehearing herein, was submitted to the court; upon due consideration whereof, the court finds no probable error in the judgment of this court heretofore entered herein. It is, therefore, ordered and adjudged that said motion for rehearing be, and same hereby is overruled and a rehearing herein denied.

A. M. MORRISSEY,
Chief Justice.

272 And afterwards, to wit, on May 19, 1921, there was filed in the office of the Clerk of said Supreme Court, a certain Motion for an Order, withholding a mandate in said case and to fix a supersedeas bond, which Motion is in the words and figures following, to wit:

In the Supreme Court of the State of Nebraska.

No. 21252.

SIOUX CITY BRIDGE COMPANY, Appellant,

vs.

DAKOTA COUNTY, NEBRASKA, Appellee.

Motion.

Comes now Sioux City Bridge Company upon the Order of the Court denying its application for rehearing in this cause, and moves the Court that mandate be withheld until the further order of the Court and that the Court fix the amount of supersedeas bond required of Appellant to the end that Appellant be given opportunity and time to apply to the Supreme Court of the United States for a writ of certiorari or for a writ of error in this cause or both.

WYMER DRESSLER,

JESSE L. ROOT,

Attorneys for Sioux City Bridge Co.

273 And afterwards, to wit, on May 23, 1921, there was rendered by said Supreme Court and entered of record upon the Journal thereof, a certain Order and Judgment in the words and figures following, to wit:

Supreme Court of Nebraska, January Term, A. D. 1921, May 23.

No. 21252.

In re Appeal of Sioux City Bridge Co.

SIOUX CITY BRIDGE COMPANY, Appellant,

v.

DAKOTA COUNTY, Appellee.

Appeal from the District Court of Dakota County.

This cause coming on to be heard upon motion of appellant Sioux City Bridge Company for an order fixing supersedeas pending appeal or error proceedings to the Supreme Court of the United States, was submitted to me at Chambers; upon due consideration whereof, it is ordered and adjudged that said motion be, and same hereby is, sustained and supersedeas bond fixed at the sum of \$500, the same to cover costs.

A. M. MORRISSEY,
Chief Justice.

274 And afterwards, to wit, on the 26th day of May, 1921, there was filed in the office of the Clerk of said Supreme Court, a certain Præcipe of this record, which original Præcipe marked Exhibit A, is attached hereto and forms a part hereof:

275

EXHIBIT A. H. C. L.

In the Supreme Court of the State of Nebraska.

No. 21252.

SIoux CITY BRIDGE COMPANY, a Corporation, Appellant,
vs.

DAKOTA COUNTY, Appellee.

Præcipe.

To the clerk of the Supreme Court of Nebraska:

Please prepare a transcript in the above case to be used in connection with application to the Supreme Court of the United States for a writ of certiorari consisting of the following:

1.

The complete record used by the Supreme Court in the hearing of the case before it.

2.

The judgment of affirmance.

3.

Opinion of the Supreme Court.

4.

The motion for rehearing.

5.

The order of the Court on said motion.

6.

Motion of Sioux City Bridge Company for stay of mandate.

7.

Ruling of the Court on said motion.

8.

Supersedeas Bond filed.

9.

This Præcipe.

10.

Original certificate of the clerk to such complete transcript.
Dated this 26th day of May, 1921.

WYMER DRESSLER,
Attorney for Sioux City Bridge Co.

276 [Endorsed:] No. 21252. In the Supreme Court of the State of Nebraska. Sioux City Bridge Company, a corporation, Appellant, vs. Dakota County, Appellee. Præcipe. Wymer Dressler, Robert D. Neely, Paul S. Topping, Attorneys C. & N. W. Ry. Co.

277 And afterwards, to wit, on the 31st day of May, 1921, there was filed in the office of the Clerk of said Supreme Court of Nebraska, a certain Supersedeas Bond in the sum of \$500, which said bond was on said day duly approved by the Chief Justice of said Supreme Court. A copy of said Supersedeas Bond with a copy of the approval thereof by said Chief Justice, endorsed thereon, is hereto attached, marked Exhibit B, and made a part of this transcript.

278

EXHIBIT B. H. C. L.

In the Supreme Court of the State of Nebraska.

No. 21252.

SIOUX CITY BRIDGE COMPANY, a Corporation, Appellant,

vs.

DAKOTA COUNTY, NEBRASKA, Appellee.

Supersedeas Bond.

Know all men by these presents: That Sioux City Bridge Company, a corporation, as Principal, and National Surety Company, a corporation of the State of New York as Surety, are held and firmly bound unto Dakota County, Nebraska in the penal sum of Five Hundred and no/100 Dollars (\$500.00), for the payment whereof well and truly to be made, we bind ourselves, jointly and severally, firmly by these Presents,

Yet, upon the condition, that Whereas the Supreme Court of Nebraska lately affirmed judgment of the District Court of Dakota County in the above entitled cause, fixing the valuation of the property of the Sioux City Bridge Company in Dakota County, Nebraska at \$700,000 for taxing purposes and the Sioux City Bridge Company has procured a stay of the mandate of the Supreme Court pending

the application of the Sioux City Bridge Company to the Supreme Court of the United States for a writ of certiorari to the Supreme Court of Nebraska to review said judgment.

Now therefore, if the Sioux City Bridge Company shall pay all costs which may be lawfully adjudged against it if said application be denied, then this obligation to be void, otherwise to remain in full force and effect.

Dated this 26th day of May, 1921.

SIoux CITY BRIDGE COMPANY,
By WYMER DRESSLER,
Its Attorney.
NATIONAL SURETY COMPANY,
By WM. H. WHEELER,
Its Attorney in Fact.

The foregoing bond and surety thereon is hereby approved this 31st day of May, 1921.

A. M. MORRISSEY,
Chief Justice.

Endorsed: No. 2152. In the Supreme Court of the State of Nebraska. Sioux City Bridge Company, a corporation, Appellant, vs. Dakota County, Appellee. Supersedeas Bond. Wymer Dressler, Robert D. Neely, Paul S. Topping, Attorneys C. & N. W. Ry. Co.

279 And afterwards, to wit, on the 4th day of June, 1921, there was filed in the office of the Clerk of said Supreme Court, a certain Stipulation for the use of the original Exhibit 18, introduced in evidence in the District Court on the trial of said case therein, which said original Stipulation, marked Exhibit C, is attached hereto and made a part of this transcript.

280

EXHIBIT C. H. C. L.

In the Supreme Court of the State of Nebraska.

No. 21252.

SIoux CITY BRIDGE COMPANY, Plaintiff and Appellant,

VS.

DAKOTA COUNTY, Defendant and Appellee.

Stipulation.

It is hereby stipulated and agreed by and between the parties hereto that for the purpose of reducing the expense of the transcript for the Supreme Court of the United States in this case the following documents which are exhibits in the original bill of exceptions may be detached therefrom and attached to and made a part of the transcript for the Supreme Court of the United States.

1. A small white booklet about $4\frac{1}{2} \times 7\frac{1}{2}$ inches, entitled "Local Passenger Tariff, G. F. D. 37-118. Cancelling G. F. D. 164-1916 and 216-1916," etc. Issued June 3, 1918. Effective June 10, 1918, by Chicago St. Paul Minneapolis and Omaha Railway Co.

2. Pamphlet in green cover issued by Chicago St. Paul Minneapolis and Omaha Railway Co. entitled "Local Joint and Proportional Tariff on Classes and Commodities." Issued Jan. 18, 1916. Effective March 1, 1916. G. F. D. 4500.

Dated this 2nd day of June, A. D. 1921.

WYMER DRESSLER,
Attorney for Appellee.
GEO. W. LEAMER,
Attorney for Appellant.

281 [Endorsed:] No. 21252. In the Supreme Court of the State of Nebraska. Sioux City Bridge Company, Plaintiff and Appellee, vs. Dakota County, Defendant and Appellant. Stipulation. Supreme Court of Nebraska. Filed Jun. 4, 1921. H. C. Linsday, Clerk.

282 And afterwards, to wit, on the 6th day of June, 1921, there was rendered by said Supreme Court, a certain Judgment and Order duly entered upon the Journal of said Court, which Judgment and Order is in the words and figures following, to wit:

283 Supreme Court of Nebraska, January Term, A. D. 1921, June 6.

No. 21252.

In re Appeal of Sioux City Bridge Co.

SIOUX CITY BRIDGE COMPANY, Appellant,

v.

DAKOTA COUNTY, Appellee.

Appeal from the District Court of Dakota County.

And now on this day, this cause came on to be heard upon stipulation of the parties providing that a small white booklet and a pamphlet in green cover containing "Local Passenger Tariffs" and "Local Joint and Proportional Tariffs" issued by the Chicago, St. Paul, Minneapolis & Omaha Railway Company, be detached from the bill of exceptions for the purpose of allowing the same to be attached by the clerk of this court to a certain transcript to the United States Supreme Court now in process of being prepared, and was submitted to the court; upon due consideration whereof, it is by the court ordered that said stipulation be, and the same hereby is,

granted and the clerk of this court is authorized to so detach said original exhibits and include them in said transcript.

CHAS. B. LETTON,
Acting Chief Justice.

284 STATE OF NEBRASKA,
County of Lancaster, ss:

I, H. C. Lindsay, Clerk of Supreme Court within and for the State of Nebraska, and custodian of records and files thereof, do hereby certify that the foregoing consecutive pages 1 to 283, inclusive, is a full, true and correct transcript of the record and proceedings had and taken in said Court in the case of Sioux City Bridge Company, a corporation, vs. Dakota County, No. 21252, the same being an appeal from the District Court of Dakota County, Nebraska together with a copy of the opinion of the Court filed in said cause.

In witness whereof I have hereunto set my hand and affixed the seal of said Court at Lincoln, Nebraska this 15 day of June, 1921.

[Seal Supreme Court of Nebraska.]

H. C. LINDSAY,
Clerk of Supreme Court.

285 In the Supreme Court of the United States.

SIoux CITY BRIDGE COMPANY, Petitioner,

vs.

DAKOTA COUNTY, NEBRASKA, Respondent.

Stipulation.

It is hereby stipulated and agreed between the parties to this action that the tariff schedule attached to and made a part of the bill of exceptions in this action need not be printed or used in this appeal.

Dated this 7th day of July, 1921.

WYMER DRESSLER,
Attorney for Petitioner.
GEO. W. LEAMER,
Attorney for Respondent.

286 [Endorsed:] File No. 28,336. Supreme Court U. S.,
October Term, 1921. Term No. 381. Sioux City Bridge
Co., Petitioner, vs. Dakota County, Nebraska. Stipulation to omit
tariff schedule in printing. Filed July 11, 1921.

No. 21252.

SIOUX CITY BRIDGE COMPANY

v.

DAKOTA COUNTY.

Pleas Before the Supreme Court of the State of Nebraska at a Term Thereof Begun and Holden at the Capitol, in the City of Lincoln, in said State, on the 19th Day of September, 1921.

Present: Hon. Andrew M. Morrissey, Chief Justice; Hon. Charles B. Letton, Judge; Hon. William B. Rose, Judge; Hon. James R. Dean, Judge; Hon. Chester H. Aldrich, Judge; Hon. George A. Day, Judge; Hon. Leonard A. Flansburg, Judge.

Attest:

H. C. LINDSAY,
Clerk.

Be it remembered, That on the 9th day of December, 1921, there was filed in the office of the clerk of said supreme court of Nebraska, a certain Stipulation in the words and figures following, to wit:

In the Supreme Court of the State of Nebraska.

No. 21252.

SIOUX CITY BRIDGE COMPANY, Appellant,

vs.

DAKOTA COUNTY, NEBRASKA, Appellee.

Stipulation.

It is hereby stipulated and agreed by and between the parties above named through their respective attorneys that the record now on file in the Supreme Court of the United States in this cause which was filed in connection with the application of the Sioux City Bridge Company for a writ of certiorari may be taken and used as the record in said cause upon the hearing thereof upon the merits, and the Clerk of the Supreme Court of Nebraska may return this Stipulation with the Writ of Certiorari as a complete return to said writ.

Dated this 7 day of December, 1921.

WYMER DRESSLER,

Attorney for Sioux City Bridge Company.

GAINES, VAN ORSDEL & GAINES,

GEO. W. LEAMER,

Attorney for Dakota County, Nebraska.

Endorsed: 21252. In the matter of the appeal of the Sioux City Bridge Company from the assessment of its property in Dakota County for taxing purposes. Sioux City Bridge Company v. Dakota County. Stipulation. Supreme Court of Nebraska. Filed Dec. 9, 1921. H. C. Lindsay, Clerk.

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Nebraska, Greeting:

Being informed that there is now pending before you a suit in which Sioux City Bridge Company is appellant, and Dakota County, Nebraska, is appellee, No. 21252, which suit was removed into the said Supreme Court by virtue of an appeal from the District Court of Dakota County, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the nineteenth day of November, in the year of our Lord one thousand nine hundred and twenty-one.

WM. R. STANSBURY,

Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 28,336. Supreme Court of the United States, October Term, 1921. No. 381. Sioux City Bridge Company vs. Dakota County, Nebraska. Writ of Certiorari.

Authentication of Record—Writ of Certiorari.

SUPREME COURT,

State of Nebraska, ss:

I, H. C. Lindsay, clerk of said court, do hereby certify that the foregoing pages numbered 1 and 2 are a full, true and complete transcript and copy of the stipulation filed in my said office on December 9, 1921, in the case of Sioux City Bridge Company v. Dakota County, No. 21252, as the same now appears of record and on file in my office.

In Testimony Whereof, I have hereunto set my hand and officially affixed the seal of said court at my office in Lincoln, Nebraska, this December 9, 1921.

[Seal of Supreme Court of Nebraska.]

H. C. LINDSAY,

Clerk Supreme Court of Nebraska.

Return to Writ of Certiorari.

UNITED STATES OF AMERICA,

Supreme Court of Nebraska, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript and copy of the stipulation filed in my office on December 9, 1921, providing that the record now on file in the Supreme Court of the United States in the case of Sioux City Bridge Company v. Dakota County, No. 21252, may be taken and used as the record in said cause in said Supreme Court of the United States upon the hearing thereof on its merits.

In Witness Whereof, I hereunto subscribe my name and officially affix the seal of said Supreme Court of Nebraska in the City of Lincoln, this December 9, 1921.

[Seal of Supreme Court of Nebraska.]

H. C. LINDSAY,

Clerk Supreme Court of Nebraska.

[Endorsed:] 381/28,336.

[Endorsed:] File No. 28,336. Supreme Court U. S., October Term, 1921. Term No. 381. Sioux City Bridge Co., Petitioner, v. Dakota County. Writ of certiorari and return. Filed Dec. 12, 1921.

(5524)

**IN THE
SUPREME COURT OF THE
UNITED STATES**

October Term, A. D. 1921

No. _____

SIoux CITY BRIDGE COMPANY,
Petitioner,
vs.
DAKOTA COUNTY, NEBRASKA,
Respondent.

In the Matter of the Application of Sioux City Bridge Company for a Writ of Certiorari to the Supreme Court of the State of Nebraska.

PETITION FOR WRIT OF CERTIORARI

*To the Honorable, the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

The Petition of Sioux City Bridge Company for a writ of certiorari directed to the Supreme Court of the State of Nebraska, and ordering that the record in a certain cause be certified to this Honorable Court for final review and determination according to law, said appealed cause being entitled as follows:

"In the Supreme Court of Nebraska; Sioux City Bridge Company, Plaintiff and Appellant, vs. Dakota County, Nebraska, Defendant and Appellee."

Your Petitioner, Sioux City Bridge Company, respectfully shows to this Honorable Court as follows:

I

Your Petitioner is and was at all times hereafter referred to a corporation organized and existing under the laws of the State of Iowa, and was and is the owner of a certain railway bridge located at Sioux City, Iowa, spanning the Missouri River, a portion of said bridge being in the State of Iowa and a portion in Dakota County, Nebraska.

II

The controversy in this case is the valuation of the portion of said bridge in Dakota County, Nebraska, for taxing purposes.

III

Section 6364 Revised Statutes of Nebraska, 1913, provides:

"All persons, companies, or corporations owning, controlling or operating any highway or railroad bridge independent of a railroad system over any stream or river forming the boundary line between this and any other state, shall be required to list the same for taxation, and the same shall be assessed and taxed at its true value in money as personal property. In arriving at one-fifth of such value, if such bridge is constructed

over a navigable stream, the value of the same to the center of the channel of such stream, together with all rights, privileges and franchises connected therewith or belonging thereto, shall be taken into consideration in ascertaining the true value of such bridge property for taxation; and it shall be the duty of such persons or companies or corporations by their president, vice president, managing agent or the superintendent of such bridge, to make out a return to the proper assessor, giving the dimensions of the bridge in the county where it is located, together with a full statement of its rights, privileges and franchises, and the same shall be returned by the assessor."

In the Spring of 1918 the County Assessor of Dakota County made out a schedule in which he pretended to describe the property of the Sioux City Bridge Company in Dakota County, but in which he placed the lump sum value of its property at \$600,000.00. He forwarded such schedule to the taxing officer of the Sioux City Bridge Company for signature. The Sioux City Bridge Company refused to sign the schedule on the ground that the valuation was excessive and returned the same to the County Assessor unsigned; and requested that the valuation be fixed at a less amount. The Assessor refused to reduce the valuation and made an entry upon his books that the value of the Sioux City Bridge Company's property for taxing purposes was fixed at \$600,000.00. The Sioux City Bridge Company appealed to the Board of Equalization for relief.

On June 18, 1918, the County Board of Equalization, by its order, increased the valuation of the bridge in Dakota County for taxing purposes to \$700,000.00. The order of the Board of Equalization was as follows:

"Dakota City, Nebraska, June 18, 1918.

The Board of Equalization for assessment of property within and for Dakota County, Nebraska, met in regular session at eleven o'clock A. M. Present: O. W. Fisher, Chairman; A. Ira Davis, John Seller, and George Wilkins, County Clerk; J. P. Rockwell, County Assessor, and George W. Leamer, County Attorney.

At this time the matter of the equalization of the value and assessment of that part of the bridge crossing the Missouri River and owned by the Sioux City Bridge Company which is taxable in Dakota County, came on for hearing.

Ward Evans, City Attorney for South Sioux City, appeared and asked to have the valuation of the said bridge, which is commonly known as the "high bridge," raised. William Mueller appeared on behalf of the Sioux City Bridge Company and asked to have the valuation and the assessment of said bridge lowered.

Whereupon the Board ordered that the value and assessment of the approach of said bridge be raised from \$150,000.00 to \$200,000.00 and that the valuation and assessment of the bridge proper be raised from \$450,000.00 to \$500,000.00 or the total value and assessment of the bridge and approach be raised from \$600,000.00 to \$700,000.00.

The said Sioux City Bridge Company by William Mueller duly excepts to said order."

Section 6440 Revised Statutes Nebraska, 1913, provides:

"Appeals may be taken from any action of the county board of equalization to the District Court within twenty days after its adjournment, in the same manner as appeals are now taken from the action of the county board in the allowance or disallowance of claims against the county. No appeal shall in any manner suspend the collection of any tax, or the duties of officers relating thereto, during the pendency of the same, and all

taxes affected thereby, which may be collected, shall be kept by the treasurer in a special fund without distribution. The Court shall hear the appeal as in equity and without a jury, and determine anew all questions raised before the board which relate to the liability of the property to assessment, or the amount thereof, and any decision rendered therein shall be certified by the clerk of the court to the county clerk, who shall correct the assessment books in his office accordingly. If the tax books have been delivered to the treasurer of the county for the collection of such tax before the determination of such appeal in the District Court, a copy of such decision shall be certified to the treasurer of the county, who shall thereupon distribute or return such tax so held, in accordance with such decision, and the treasurer shall correct his record to conform to such decision, unless a further appeal be taken to the Supreme Court, in which case the treasurer shall hold said tax until the final determination of the appeal in that Court."

Your Petitioner duly appealed to the District Court of Dakota County from the order of the Board of Equalization alleging as ground of complaint as follows:

"Comes now Your Petitioner, Sioux City Bridge Company, a corporation of the State of Iowa, and for its petition on appeal from the order of the Board of Equalization of Dakota County, Nebraska, fixing the valuation of the bridge and approach of said Sioux City Bridge Company in Dakota County at \$700,000.00 and respectfully shows to the court that said valuation is excessive and should be reduced for the following reasons:

1. Said property within the jurisdiction of Dakota County is not worth on the market the sum fixed by said Board of Equalization.
2. Said valuation is not a fair and reasonable valuation.

3. Said valuation is not the actual money value of said property but is greatly in excess thereof.

4. Said valuation is in excess of the original cost of said bridge and disregards the elements of depreciation, said bridge being more than thirty years old.

5. Said valuation was fixed by the Board of Equalization of Dakota County without evidence and arbitrarily and irrespective of the true facts.

6. Said valuation if permitted to stand and the Sioux City Bridge Company is compelled to pay taxes thereon, will result in the Sioux City Bridge Company being denied equal protection of the law, and being deprived of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

7. Said valuation if permitted to stand will violate the Constitution of Nebraska which requires that the taxing burden shall be uniform and said valuation of said property is out of proportion to and greatly in excess of the relative valuation of other property in Dakota County.

WHEREFORE, Your Petitioner, Sioux City Bridge Company, prays the Court to reduce said valuation fixed by the Board of Equalization of Dakota County to such sum as justice and equity require, which valuation, Your Petitioner declares, does not exceed \$350,000.00."

Issue was joined by Dakota County in the District Court and a trial de novo was had and the District Court entered its decree fixing the valuation at \$700,000.00.

From that decree Your Petitioner appealed to the Supreme Court of Nebraska.

Section 1, Article 9 of the Constitution of Nebraska then in force provided:

"The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property and franchises, the value to be ascertained in such manner as the legislature shall direct. * * *"

The evidence before the District Court, and of course before the Supreme Court of Nebraska, showed, without dispute, that whereas the property of your Petitioner had been valued for taxing purposes at 100% or more of its true value, that real estate and other property in Dakota County was universally valued at only 55% of its true value for taxing purposes and your Petitioner claimed, both in the District Court and in the Supreme Court of Nebraska, that this discrimination against your Petitioner by the Board of Equalization of Dakota County and the taxing authorities denied to your Petitioner equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The Supreme Court of Nebraska affirmed the decree of the District Court of Dakota County and in its opinion in the case held:

"Where property is assessed for taxation at its true value, and other property in the district is assessed at 55 per cent of its true value, the remedy, to secure equal taxation, is to have the property assessed below its true value raised, rather than to have the property assessed at its true value reduced. Section 6300 Revised Statutes 1913 contemplates that all property be assessed at its true value."

Section 6300 Revised Statutes Nebraska 1913 provides:

"All property in this state not expressly exempt therefrom shall be subject to taxation, and shall be

valued at its actual value which shall be entered opposite each item and shall be assessed at twenty per cent of such actual value. Such assessed value shall be entered in separate column opposite each item, and shall be taken and considered as the taxable value of such property, and the value at which it shall be listed and upon which the levy shall be made. Actual value as used in this chapter shall mean its value in the market in the ordinary course of trade:

The Court further says in its opinion:

"It is finally urged that this Court shall reduce the true value of the bridge as found by the Court to 55 per cent of such value, for the reason that other property in the district is assessed at 55 per cent of its true value, and that it would be manifestly unjust to appellant to assess its property at its true value while other property in the district is assessed at 55 per cent of its true value.

"While undoubtedly the law contemplates that there should be equality in taxation, we are of the view that the plan of equalization proposed by appellant is not the proper remedy. The rule is now settled by a recent decision of this court that when property is assessed at its true value, the proper remedy is to have the property assessed below its true value raised, rather than to have property assessed at its true value reduced. *Lincoln Telephone & Telegraph Co. vs. Johnson County*, 102 Neb. 254. In the argument of appellant the soundness of this ruling is assailed, and authorities in other jurisdictions are cited which seem at variance with our holding. We are not willing, however, to recede from the rule of that case."

Your Petitioner relied, both in the District Court of Dakota County and in the Supreme Court of Nebraska, as shown by the record and its printed brief, upon the following propositions:

The Sioux City Bridge Company has the right not only to have its property valued at no more than its actual market value, but it has the right to be taxed upon no greater proportion of that market value than other taxpayers within the jurisdiction of the taxing authority are required to pay upon their property, and that a denial by the taxing authority of such equality of treatment denies to your petitioner equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and violates the Constitution of Nebraska.

Section 1 Article 9 Constitution of Nebraska.

Greene vs. Louis & Interurban Railroad Co., 244 U. S. 499.

Louisville & Nashville Railroad Company vs. Greene, 244 U. S. 522.

Illinois Central Railroad Co. vs. Greene, 244 U. S. 555.

Iowa Central Railway Co. vs. Board of Review, 157 N. W. Rep. 731.

The questions and propositions of law involved in this case are as follows:

I.

Whether the action of the county taxing authorities in assessing the property of your petitioner at full 100% of its actual value for taxing purposes, while property generally in said county is assessed at only 55% of its actual value (the Constitution and laws of the State provide for equality in taxation) denies to your petitioner equal protection of the law within the meaning of the Fourteenth Amendment to the Constitution of the United States.

II.

Whether the remedy under State law as construed by the highest court of the State, requiring your petitioner to use its best efforts to have the assessments of other taxpayers raised to the basis of the assessment against your petitioner (or suffer the discrimination to continue) affords to your petitioner equal protection of the law and due process of law required by the Fourteenth Amendment to the Constitution of the United States.

Your Petitioner further avers that the present case is one in which it is proper for this Court to issue a writ of certiorari for the following reasons:

I.

Because it is a violation of the Fourteenth Amendment to the Constitution of the United States for the taxing authorities of a State, in violation of State Law and the State Constitution to assess the property of your Petitioner at 100% of its actual value for taxing purposes while property generally in said county is assessed at only 55% of its actual value.

II.

Because the remedy suggested by the Supreme Court of Nebraska construing the constitution and laws of the State which would require your Petitioner to use its best efforts to have the assessments of other taxpayers in the County increased to the basis of actual value, is a political remedy and not a private remedy as demanded by the equal protection clause of the Fourteenth Amendment to the Constitution of the United States; and

III.

Because the holding and decision of the Supreme Court of Nebraska in the respects mentioned are in conflict with the decision of this Court heretofore cited; and by the decision and holding of the Supreme Court of Nebraska, which is the highest court of the State in which a decision could be had, your Petitioner has been denied a right, privilege and immunity claimed under the Fourteenth Amendment to the Constitution of the United States which claim was duly made both in the District Court and in the Supreme Court of the State.

WHEREFORE, Your Petitioner prays that this Honorable Court will be pleased to grant a writ of certiorari in this case to the Supreme Court of the State of Nebraska and cause the record in this case to be brought to this Honorable Court for final review and determination.

SIoux CITY BRIDGE COMPANY,

By... **Wymar Dressler**
Its Attorney.

STATE OF NEBRASKA }
COUNTY OF DOUGLAS } ss.

Wymer Dressler, being duly sworn, on oath deposes and says that he is attorney for the Sioux City Bridge Company, a corporation, and also attorney of record for the above entitled petitioner, and makes this verification for and in its behalf and is thereunto duly authorized; that he has read the foregoing petition and knows the contents thereof and that the same is true to the best of his knowledge and belief; that his knowledge and belief are derived from the record in this case in his possession and custody as such attorney and from his personal knowledge of the proceedings had in the District Court of Dakota County, Nebraska, and in the Supreme Court of the State of Nebraska.

..... **Wymer Dressler**

Subscribed and sworn to before me this.....day
of June, 1921.

.....
Notary Public, Douglas County, Nebraska.

My Commission expires.....

**IN THE
SUPREME COURT OF THE
UNITED STATES**

October Term, A. D. 1921

No. _____

SIOUX CITY BRIDGE COMPANY,
Petitioner,
vs.
DAKOTA COUNTY, NEBRASKA
Respondent.

In the Matter of the Application of Sioux City Bridge Company for a Writ of Certiorari to the Supreme Court of the State of Nebraska.

NOTICE

To George W. Leamer, County Attorney, Dakota County, Nebraska; and to the Above Named Respondent:

Please take notice that on the first Monday (being the third day) of October, 1921, upon the opening of Court, or as soon thereafter as Counsel can be heard, at the Court Room of the Supreme Court of the United States, in the City of Washington, D. C., we shall present to the Court the accompanying Petition for the issuance of a Writ of Certiorari to be directed to the Supreme Court of the State

of Nebraska, and shall ask that permission be given to present such Petition, and that the Writ of Certiorari be issued as in said Petition prayed.

.....
Wymer Dressler

Counsel for Petitioner.

Due personal service of the foregoing Notice and accompanying Petition for Writ of Certiorari, and of the Brief of Petitioner in support of said Petition, is hereby admitted by the undersigned, Counsel for the Respondent, this.....day of.....1921.

.....
Counsel for Respondent.

**IN THE
SUPREME COURT OF THE
UNITED STATES**

October Term, A. D. 1921

No. _____

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DAKOTA COUNTY, NEBRASKA
Respondent.

**In the Matter of the Application of Sioux City Bridge Com-
pany for a Writ of Certiorari to the Supreme Court of
the State of Nebraska.**

**BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI**

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The opinion of the Supreme Court of Nebraska in this case recognizes that petitioner has been assessed at 100 per cent of the value of its property in Dakota County while other taxpayers are assessed uniformly at only 55 per cent of the value of their property, and that such discrimination violates the Constitution and laws of the State, but denies to your petitioner judicial relief. Petitioner is thereby denied equal protection of the law guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

In *Greene vs. Louisville & Interurban Railroad Co.*, 244 U. S. 501, this Court says in the syllabus:

"The principal if not the sole reason for adopting 'fair cash value' as the standard for valuation is as a convenient means of securing equal taxation, and, since, when the standard is systematically departed from in respect of certain classes of property, its observance in respect of others (the tax rate being uniform) would serve to frustrate its very object, it follows that, in such cases, the duty to assess at full value is not supreme but yields to the duty to avoid discrimination.

Uniformity in taxing implies equality in the burden of taxation; and this equality cannot exist without uniformity in the basis of assessment, as well as in the rate of taxation.

A decision of the state Supreme Court in holding that such discrimination is not subject to correction in the courts of the State, and that the equality and uniformity provisions of the state constitution may be enforced only by selection of proper assessing officers, is not binding upon the federal courts.

Discrimination resulting from an assessment of the intangible property of a railroad corporation by the Board of Valuation and Assessment at 75 per cent of

its actual value while the property of individuals and other classes of corporations, taxed at the same rate, is generally and systematically assessed by other and independent taxing authorities of the State at not more than 60 per cent of actual value, is violative of the provisions of the Kentucky Constitution requiring uniform taxation in proportion to value and an identical rate as between corporate and individual property; and this has been recognized by the Supreme Court of the State."

The Court further says at page 512 of the Opinion:

"It hardly is open to serious dispute that if the legislature had confided to a single body the determination of the basis of assessment of the real estate and personal property of individuals, and non-franchise corporations, on the one hand, and of the tangible and intangible property of public service corporations, on the other, the valuation of property of the latter class on the basis of 75 per cent of its actual value, while property of the former class was assessed systematically at 52 per cent, or not more than 60 per cent, of its actual value, would be inconsistent with the sections we have quoted from the Kentucky Constitution."

It will be observed that the question presented in the case at bar is identical with the question involved in the Greene case, *supra*, with this difference: In the Green case the discrimination resulted from the actions of several assessing bodies, while in the case at bar the discrimination is the result of the action of a single taxing authority and is therefore the more reprehensible.

This Court further said in the Greene case, page 519:

"The next question in order is whether the assessments have the effect of denying to plaintiffs the equal protection of the laws, within the meaning of the Four-

teenth Amendment. It is obvious, however, in view of the result reached upon the questions of state law, just discussed, that the disposition of the cases would not be affected by whatever result we might reach upon the federal question; for no other or greater relief is sought under the 'equal protection' clause than plaintiffs are entitled to under the provisions of the constitution and laws of the State to which we have referred. Therefore, we find it unnecessary to express any opinion upon the question raised under the Fourteenth Amendment."

The Greene case originated in a Federal Court of Equity which afforded relief to the plaintiff under the State Laws. But in the case at bar the proceeding originated in the state court and it is necessary, we think, therefore, for this Court to determine what rights Petitioner has under the "equal protection" clause of the Fourteenth Amendment to the Federal Constitution..

The doctrine of the Greene case is expressly approved by this Court in *Evans vs. National Bank of Savannah*, 251 U. S. 108, where the court says at pages 118, 119:

"The legal problem is precisely analogous to that involved in comparing respective burdens of taxation imposed upon different properties or classes of property; concerning which this court has more than once held that a law requiring that one class shall be taxed at the 'same rate of taxation' paid by another requires that not only the percentage of the rate but the basis of the valuation shall be the same. *Cummings v. National Bank*, 101 U. S. 13, 158, 162-163; *Greene v. Louisville & Interurban R. R. Co.*, 244 U. S. 499, 515."

And in the case of *United States vs. Osage County*, 251 U. S. 128, the Court had under consideration discrimination in valuation for assessment purposes of lands belonging to

the Indians: Answering the contention that the Federal Courts of Equity had no jurisdiction to determine the matter because there was an adequate remedy under the state laws by way of appealing to the Board of Equalization for equitable treatment, the Court justifies the interposition of the Court of Equity for various reasons, among others pp. 133-134):

"in the second place because, as the wrong relied upon was not a mere mistake or error committed in the enforcement of the state tax laws, but a systematic and intentional disregard of such laws by the state officers for the purpose of destroying the rights of the whole class of non-competent Indians who were subject to the protection of the United States, it follows that such class wrong and disregard of the state statute gave rise to the right to invoke the interposition of a court of equity in order that an adequate remedy might be afforded." (Citing many cases.)

In *Iowa Central Railway Company vs. Board of Review*, 157 N. W. 731, the Supreme Court of Iowa says:

"The paramount object of the law in distributing the burden of taxation is equality, and though property of a taxpayer is assessed at less than its true value, yet if it is assessed higher in proportion than other property, he has a just cause of complaint."

The property of your Petitioner is located partly in Iowa and partly in Nebraska. In Iowa the decisions and laws of that State require that the property of your Petitioner be assessed upon the same basis as the property of other taxpayers. In Nebraska the Constitution and Laws of the State require equality of taxation so that the taxes of your Petitioner will be on the same basis as the taxes paid by other taxpayers, but as we have seen the Supreme

Court of Nebraska refuses to enforce that equality provision of the State Constitution. This refusal by the State Supreme Court and by the taxing authorities denies to your Petitioner equal protection of the law within the meaning of the Fourteenth Amendment to the Federal Constitution.

Your Petitioner has therefore been denied a right guaranteed by the Constitution of the United States; your Petitioner has exhausted its remedy in the Courts of the State and has been denied relief by the highest Court of the State.

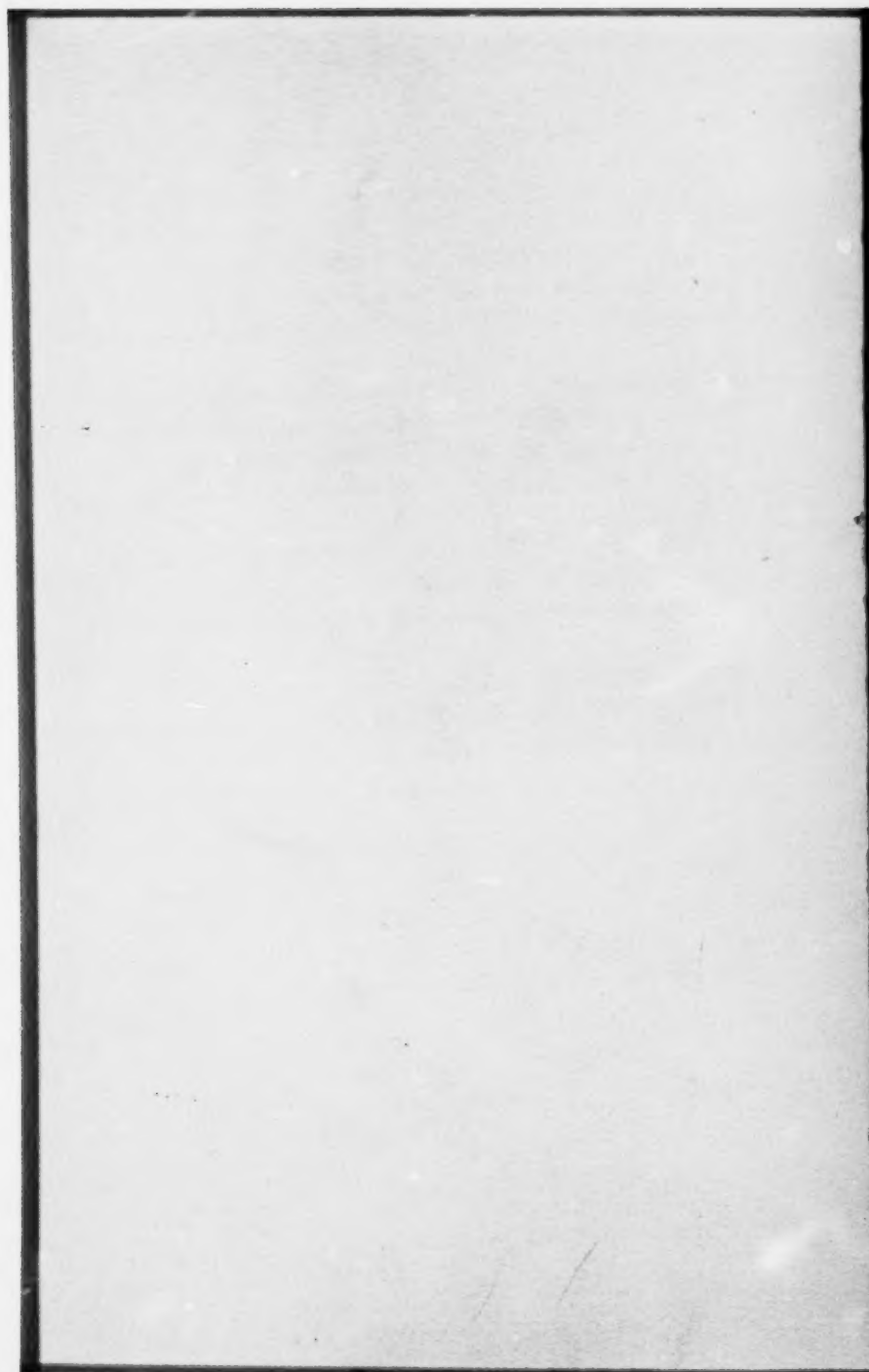
Your Petitioner therefore respectfully submits that the foregoing Petition for a Writ of Certiorari should be granted and the record in this case sent up for final review and determination by this Court, inasmuch as the question is one of great importance and gravity involving a right, privilege and immunity accorded to your Petitioner under the Constitution of the United States which has been denied by the Supreme Court of the State of Nebraska.

Respectfully submitted,

Wymer Dressler

.....
Counsel for Petitioner.





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IN THE
Supreme Court of the United States
October Term, 1921

No. 381

SIoux CITY BRIDGE COMPANY,
Petitioner,

vs:

DAKOTA COUNTY, NEBRASKA,
Respondent.

**ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF NEBRASKA**

BRIEF OF PETITIONER

STATEMENT OF THE CASE

This case is here on writ of certiorari to the Supreme Court of Nebraska upon the complaint of petitioner that it has been denied equal protection of the law and due process of law in violation of the Constitution and Laws of Nebraska and in violation of the Fourteenth Amendment to the Constitution of the United States on account of the discrimination which has been practiced against it by the taxing authorities of Dakota County, Nebraska.

Petitioner is a corporation organized under the laws of the State of Iowa, and is the owner of a certain railroad bridge located at Sioux City, Iowa, spanning the Missouri River, a portion of said bridge being in the State of Iowa and a portion in Dakota County, Nebraska. The controversy in this case is the valuation of the portion of said bridge in Dakota County, Nebraska, for taxing purposes as well as the question of discrimination which has been practiced against petitioner as compared with other taxpayers in Dakota County.

Section 6364 Revised Statutes of Nebraska, 1913, provides:

“All persons, companies, or corporations owning, controlling or operating any highway or railroad bridge independent of a railroad system over any stream or river forming the boundary line between this and any other State, shall be required to list the same for taxation, and the same shall be assessed and taxed at its full true value in money as personal property. In arriving at one-fifth of such value, if such bridge is constructed over a navigable stream, the value of the same to the center of the channel of such stream, together with all rights, privileges and franchises connected therewith or belonging thereto, shall be taken into consideration in ascertaining the true value of such bridge property for taxation; and it shall be the duty of such persons or companies or corporations by their president, vice president, managing agent or the superintendent of such bridge, to make out a return to the proper assessor, giving the dimensions of the bridge in the county where it is located, together with a full statement of its rights, privileges and franchises, and the same shall be returned by the assessor.”

It had been the practice of the county assessor of Dakota County for many years, prior to 1918, to himself make

out a schedule of the bridge property simply listing the property as the Sioux City Bridge, and himself fixing the valuation of the same for taxing purposes and sending such schedules to some agent of the Bridge Company for signature. That had been the practice for many years as shown by the record.

In the Spring of 1918 the County Assessor of Dakota County made out a schedule in which he described the property of the Sioux City Bridge Company in Dakota County, but in which he placed the lump sum value of its property at \$600,000.00. He forwarded such schedule to the taxing officer of the Sioux City Bridge Company for signature. The Sioux City Bridge Company refused to sign the schedule on the ground that the valuation was excessive and returned the same to the County Assessor unsigned; and requested that the valuation be fixed at a less amount. The assessor refused to reduce the valuation and made an entry upon his books that the value of the Sioux City Bridge Company's property for taxing purposes was fixed at \$600,000.00.. The Sioux City Brodge Company appealed to the Board of Equalization of Dakota County for relief.

This appeal was merely the appearance by the tax agent of the Petitioner before the County Board of Equalization at their annual meeting and a verbal complaint as to the valuation of the bridge property.

On June 18, 1918, the County Board of Equalization, by its order, increased the valuation of the bridge in Dakota County for taxing purposes to \$700,000.00. The order of the Board of Equalization was as follows:

"Dakota City, Nebraska, June 18, 1918.

"The Board of Equalization for assessment of property within and for Dakota County, Nebraska, met in regular session at eleven o'clock A. M. Present: O. W. Fisher, Chairman; A. Ira Davis, John Seller, and George Wilson, County Clerk; J. P. Rockwell, County Assessor, and George W. Leamer, County Attorney.

"At this time the matter of the equalization of the value and assessment of that part of the bridge crossing the Missouri River and owned by the Sioux City Bridge Company which is taxable in Dakota County, came on for hearing.

"Ward Evans, City Attorney for South Sioux City, appeared and asked to have the valuation of the said bridge, which is commonly known as the high bridge, raised. Wm. Mueller appeared on behalf of the Sioux City Bridge Company and asked to have the valuation and the assessment of said bridge lowered.

"Whereupon the Board ordered that the value and assessment of the approach of said bridge be raised from \$150,000.00 to \$200,000.00 and that the valuation and assessment of the bridge proper be raised from \$450,000.00 to \$500,000.00 or the total value and assessment of the bridge and approach be raised from \$600,000.00 to \$700,000.00.

"The said Sioux City Bridge Company by Wm. Mueller duly excepts to said order."

From this Order of the Board of Equalization Petitioner perfected an appeal to the District Court of Dakota County, as provided by *Section 6440, Revised Statutes of Nebraska, 1913*, which provides:

"Appeals may be taken from any action of the County Board of Equalization to the District Court within twenty days after its adjournment, in the same manner as appeals are now taken from the action of the County

Board in the allowance or disallowance of claims against the County. No appeal shall in any manner suspend the collection of any tax, or the duties of officers relating thereto, during the pendency of the same, and all taxes affected thereby, which may be collected, shall be kept by the Treasurer in a special fund without distribution. The Court shall hear the appeal as in equity and without a jury, and determine anew all questions raised before the Board which relate to the liability of the property to assessment, or the amount thereof, and any decision rendered therein shall be certified by the Clerk of the Court to the County Clerk, who shall correct the assessment books in his office accordingly. If the tax books have been delivered to the Treasurer of the County for the collection of such tax before the determination of such appeal in the District Court, a copy of such decision shall be certified to the Treasurer of the County, who shall thereupon distribute or return such tax so held, in accordance with such decision, and the Treasurer shall correct his record to conform to such decision, unless a further appeal be taken to the Supreme Court, in which case the Treasurer shall hold said tax until the final determination of the appeal in that court."

Petitioner in its appeal to the District Court of Dakota County complained upon the following grounds:

"Comes now your Petitioner, Sioux City Bridge Company, a Corporation of the State of Iowa, and for its petition on appeal from the order of the Board of Equalization of Dakota County, Nebraska, fixing the valuation of the bridge and approach of said Sioux City Bridge Company in Dakota County at \$700,000.00, and respectfully shows to the Court that said valuation is excessive and should be reduced for the following reasons:

"1. Said property within the jurisdiction of Dakota County is not worth on the market the sum fixed by said Board of Equalization.

"2. Said valuation is not a fair and reasonable valuation.

"3. Said valuation is not the actual money value of said property, but is greatly in excess thereof.

"4. Said valuation is in excess of the original cost of said bridge and disregards the elements of depreciation, said bridge being more than thirty years old.

"5. Said valuation was fixed by the Board of Equalization of Dakota County without evidence and arbitrarily and irrespective of the true facts.

"6. Said valuation if permitted to stand and the Sioux City Bridge Company is compelled to pay taxes thereon, will result in the Sioux City Bridge Company being denied equal protection of the law, and being deprived of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

"7. Said valuation if permitted to stand will violate the Constitution of Nebraska which requires that the taxing burden shall be uniform and said valuation of said property is out of proportion to and greatly in excess of the relative valuation of other property in Dakota County.

WHEREFORE, your Petitioner, Sioux City Bridge Company, prays the Court to reduce said valuation fixed by the Board of Equalization of Dakota County to such sum as justice and equity require, which valuation your Petitioner declares, does not exceed \$350,000.00."

Issue was joined by Dakota County in the District Court and a trial *de novo* was had and the District Court entered its decree fixing the valuation at \$700,000.00.

From that decree Petitioner appealed to the Supreme Court of Nebraska.

Section 1, Article 9 of the Constitution of Nebraska,
then in force provided:

"The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property and franchises, the value to be ascertained in such manner as the legislature shall direct. * * *"

The evidence before the District Court, and of course before the Supreme Court of Nebraska, showed, without dispute, that whereas the property of your Petitioner had been valued for taxing purposes at 100% or more of its true value, that real estate and other property in Dakota County was universally valued at only 55% of its true value for taxing purposes, and your Petitioner claimed, both in the District Court and in the Supreme Court of Nebraska, that this discrimination against Petitioner by the Board of Equalization of Dakota County and the taxing authorities denied Petitioner equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The Supreme Court of Nebraska affirmed the decree of the District Court of Dakota County and in its opinion held:

"Where property is assessed for taxation at its true value, and other property in the district is assessed at 55% of its true value, the remedy, to secure equal taxation, is to have the property assessed below its true value raised, rather than to have the property assessed at its true value reduced. Section 6300 Revised Statutes 1913 contemplates that all property be assessed at its true value."

Section 6300 Revised Statutes Nebraska, 1913, provides:

"All property in this State not expressly exempt therefrom shall be subject to taxation, and shall be valued at its true value which shall be entered opposite each item and shall be assessed at 20% of such actual value. Such assessed value shall be entered in separate column opposite each item, and shall be taken and considered as the taxable value of such property, and the value at which it shall be listed and upon which the levy shall be made. Actual value as used in this chapter shall mean its value in the market in the ordinary course of trade."

The Supreme Court of Nebraska further says in its Opinion:

"It is finally urged that this Court shall reduce the true value of the bridge as found by the Court to 55% of such value, for the reason that other property in the district is assessed at 55% of its true value, and that it would be manifestly unjust to Appellant to assess its property at its true value while other property in the district is assessed at 55% of its true value.

"While undoubtedly the law contemplates that there should be equality in taxation, we are of the view that the plan of equalization proposed by appellant is not the proper remedy. The rule is now settled by a recent decision of this Court that when property is assessed at its true value, the proper remedy is to have the property assessed below its true value raised, rather than to have property assessed at its true value reduced. *Lincoln Telephone & Telegraph Co. v. Johnson County*, 102 Neb. 254. In the argument of appellant the soundness of this ruling is assailed, and authorities in other jurisdictions are cited which seem at variance with our holding. We are not willing, however, to recede from the rule of that case."

The bridge property consists of the railroad bridge across the Missouri River. This bridge is about 1,800 feet

long. About 74% of it is within the State of Nebraska, and the balance of the bridge proper is in the State of Iowa (Record, p. 77). The total cost of the bridge and its approaches which has been charged to capital account on the books of the Company is \$1,022,355.28. Of this amount, calculated upon the 74% of the property in Nebraska, \$754,689.76 of the investment is in Dakota County, Nebraska, while the balance is in Iowa (Record, p. 78). The approaches to the bridge consist merely of single track railroad of which 1.14 miles is in Dakota County, Nebraska, and the balance of the approach, consisting of 1.74 miles is in the State of Iowa. The bridge and its approaches constitute a unit and are devoted exclusively to ordinary railroad purposes.

The questions presented are therefore two questions of fact:

1. What is the true value of the bridge property in Dakota County, Nebraska, for the year 1918?
2. What is the basis of assessing all other property in the County for taxing purposes?

And the question of law presented is:

Whether Petitioner is entitled under the Fourteenth Amendment to the Federal Constitution to be treated on a basis of equality with other taxpayers as required by the State Constitution and Statutes; or whether Petitioner has no remedy except that suggested by the Supreme Court of Nebraska, to use its best endeavors to have the tax valuations of all other taxpayers in the County raised to the level of Petitioner's valuation.

SPECIFICATIONS OF ERRORS

I.

The District Court of Dakota County, Nebraska, and the Supreme Court of Nebraska erred in holding and deciding that the valuation of \$700,000.00, fixed by the Board of Equalization, was the fair valuation of the bridge for taxing purposes for the year 1918, such holding being contrary to the evidence.

II.

The Supreme Court of Nebraska erred in holding and deciding that "Where property is assessed for taxation at its true value, and other property in the district is assessed at 55% of its true value, the remedy, to secure equal taxation is to have the property assessed below its true value raised, rather than to have the property assessed at its true value reduced," for the reason that such holding denies to petitioner equal protection of the law guaranteed by the Fourteenth Amendment to the Federal Constitution, the remedy referred to being a political and not a private remedy.

BRIEF OF ARGUMENT

I.

The Sioux City Bridge Company has the right, not only to have its property valued at no more than its actual market value, but it has the right to be taxed upon no greater proportion of that market value than other taxpayers within the jurisdiction of the taxing authority are required to pay upon their property, and a denial by the taxing authority of such equality of treatment denies to your petitioner equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and violates the Constitution of Nebraska.

Section 1, Article 9, Constitution of Nebraska, provides:

"The legislature shall provide such revenue as may be needed by levying a tax by valuation so that every

person and corporation shall pay a tax in proportion to the value of his, her or its property and franchises, the value to be ascertained in such manner as the legislature shall direct * * *"

Section 6300, Revised Statutes Nebraska, 1913, provides:

"All property in this state not expressly exempt therefrom shall be subject to taxation, and shall be valued at its actual value, which shall be entered opposite each item and shall be assessed at 20% of such actual value. Such assessed value shall be entered in separate column opposite each item, and shall be taken and considered as the taxable value of such property, and the value at which it shall be listed and upon which the levy shall be made. Actual value as used in this chapter shall mean its value in the market in the ordinary course of trade."

Greene vs. Louisville & Interurban R. R. Co., 244 U. S. 499.

Louisville & Nashville R. R. Co. vs. Greene, 244 U. S. 522.

Illinois Central R. R. Co. vs. Greene, 244 U. S. 555.

United States vs. Board of County Commissioners of Osage County, Okla., 251 U. S. 128.

Union Pacific Railroad Co. vs. Weld Co., 247 U. S. 282.

Iowa Central R. R. Co. vs. Board of Review, 157 N. W. 731.

Cummings vs. National Bank, 101 U. S. 153.

L. & N. Ry. vs. Bosworth, 209 Fed. 300.

Washington Waterpower Co. vs. Kootenai County, 270 Fed. 369.

Raymond vs. Chicago Traction Co., 207 U. S. 20.

Atchison, Topeka & Santa Fe Ry. Co. vs. Sullivan, 173 Fed. 456.

People vs. C., B. & Q. Ry. Co., 133 N. E. 325 (Ill.)

II.

The Sioux City Bridge Company property in Dakota County is not worth \$700,000.00 for taxing purposes.

See testimony of H. Rettinghouse (Rec., pp. 52 to 61).

See testimony of F. T. Darrow (Rec., pp. 62 to 74).

III.

The Board of Equalization of Dakota County increased the value of petitioner's property from \$600,000.00 to \$700,000.00 without any evidence whatever.

See testimony of J. P. Rockwell (Rec., pp. 13 to 22).

IV.

It is undisputed that real estate and other property in Dakota County and the vicinity of petitioner's bridge is assessed at only about 55% of its true value.

See testimony of Thomas A. Polleys (Rec., pp. 79 to 101).

See opinion of Supreme Court of Nebraska containing findings of fact from the evidence (Rec., pp. 126 to 129).

ARGUMENT

I.

The Sioux City Bridge Company has the right, not only to have its property valued at no more than its actual market value, but it has the right to be taxed upon no greater proportion of that market value than other taxpayers within the jurisdiction of the taxing authority are required to pay upon their property, and a denial by the taxing authority of such equality of treatment denies to your petitioner equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and violates the Constitution of Nebraska.

Petitioner does not complain that any statute or constitutional provision of Nebraska violates the Federal Con-

stitution, but contends that Petitioner has been denied the protection of the Nebraska laws.

Mr. Chief Justice Taft recently said in *Truax vs. Corrigan*, 42 Sup. Ct. Rep. 124, at page 129:

"Our whole system of law is predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law, this is a government of law and not of men, no man is above the law,' are all maxims showing the spirit in which legislatures, executives and courts are expected to make, execute and apply laws."

The Constitution and Statutes of Nebraska plainly demand equality in the treatment of tax payers. We may be pardoned for repeating those provisions for they constitute the basis of our complaint against the taxing authorities and the decision of the Supreme Court of Nebraska.

Section 1, Article 9, Constitution of Nebraska, says:

"The legislature shall provide such revenue as may be needed by levying a tax by valuation so that every person and corporation shall pay a tax in proportion to the value of his, her or its property and franchises, the value to be ascertained in such manner as the legislature shall direct * * *"

The legislature provided the manner of taxation by *Section 6300, Revised Statutes, 1913*, as follows:

"All property in this State not expressly exempt therefrom shall be subject to taxation, and shall be valued at its actual value, which shall be entered opposite each item and shall be assessed at 20% of such actual value. Such assessed value shall be entered in separate column opposite each item, and shall be taken and considered as the taxable value of such property,

and the value at which it shall be listed and upon which the levy shall be made. *Actual value as used in this chapter shall mean its value in the market in the ordinary course of trade.*"

The opinion of the Supreme Court of Nebraska in this case recognizes that petitioner has been assessed at least 100% of the value of its property in Dakota County, while other taxpayers are assessed uniformly at only 55% of the true value of their property, and that such discrimination violates the provisions of the State Constitution and Statutes. The facts shown by the record will be discussed more in detail hereafter, but they are summarized in the Opinion of the Supreme Court of Nebraska at pages 127 and 128 of the record. The fact that Petitioner was discriminated against, when compared with other taxpayers, is conceded by the Supreme Court. They say, syllabus 3:

"Where property is assessed for taxation at its true value, and other property in the district is assessed at 55% of its true value, the remedy, to secure equal taxation is to have the property assessed below its true value raised, rather than to have the property assessed at its true value reduced. Section 6300, Revised Statutes, 1913, contemplates that all property be assessed at its true value."

It would only seem necessary, therefore, to apply the well established rules of law to such a situation.

In *Greene vs. Louisville & Interurban R. R. Co.*, 244 U. S. 501, the Court says in the syllabus:

"The principal, if not the sole reason for adopting 'fair cash value' as a standard for valuation, is as a convenient means of securing equal taxation, and, since, when the standard is systematically departed from in respect of certain classes of property, its observance

in respect of others (the tax rate being uniform) would serve to frustrate its very object, it follows that, in such cases, the duty to assess at full value is not supreme, but yields to the duty to avoid discrimination.

"Uniformity in taxing implies equality in the burden of taxation; and this equality cannot exist without uniformity in the basis of assessment, as well as in the rate of taxation.

"A decision of the state supreme court in holding that such discrimination is not subject to correction in the courts of the state, and that the equality and uniformity provisions of the state constitution may be enforced only by selection of proper assessing officers, is not binding upon the federal courts.

"Discrimination resulting from an assessment of the intangible property of a railroad corporation by the board of valuation and assessment at 75% of its actual value while the property of individuals and other classes of corporations, taxed at the same rate, is generally and systematically assessed by other and independent taxing authorities of the state at not more than 60% of actual value, is violative of the provisions of the Kentucky Constitution requiring uniform taxation in proportion to value and an identical rate as between corporate and individual property; and this has been recognized by the supreme court of the state." The Court further says at 512 of the Opinion:

"It hardly is open to serious dispute that if the legislature had confided to a single body the determination of the basis of assessment of the real estate and personal property of individuals, and non-franchised corporations, on the one hand, and of the tangible and intangible property of public service corporations, on the other, the valuation of property of the latter class on the basis of 75% of its actual value, while property of the former class was assessed systematically at 52%, or not more than 60%, of its actual value, would be inconsistent with the sections we have quoted from the Kentucky Constitution.

It will be observed that the question presented in the case at bar is identical with the question involved in the Green case, *supra*, with this difference: In the Greene case the discrimination resulted from the action of several assessing bodies, while in the case at bar the discrimination is the result of the action of a single taxing authority and is therefore the more reprehensible.

This Court further said in the Greene case, page 519:

"The next question in order is whether the assessments have the effect of denying to plaintiff the equal protection of the laws, within the meaning of the Fourteenth Amendment. It is obvious, however, in view of the result reached upon the questions of state law, just discussed, that the disposition of the cases would not be affected by whatever result we might reach upon the federal question; for no other or greater relief is sought under the equal protection clause than plaintiffs are entitled to under the provisions of the Constitution and laws of the State to which we have referred. Therefore, we find it unnecessary to express any opinion upon the question raised under the Fourteenth Amendment."

The doctrine of the Greene case is expressly approved by this Court in *Evans vs. National Bank of Savannah*, 251 U. S. 108, where the Court says at pages 118, 119:

"The legal problem is precisely analogous to that involved in comparing respective burdens of taxation imposed upon different properties or classes of property; concerning which this court has more than once held that a law requiring that one class shall be taxed at the 'same rate of taxation' paid by another requires that not only the percentage of the rate, but the basis of the valuation, shall be the same. *Cummings vs. National Bank*, 101 U. S. 13, 158, 162, 163; *Greene vs. Louisville & Interurban R. R. Co.*, 244 U. S. 499, 515."

And in the case of *United States vs. Osage County*, 251 U. S. 128, the Court had under consideration discrimination in valuation for assessment purposes of lands belonging to the Indians. Answering the contention that the federal courts of equity had no jurisdiction to determine the matter because there was an adequate remedy under the state laws by way of appealing to the board of equalization for equitable treatment, the Court justifies the interposition of the court of equity for various reasons, among others, pages 133, 134:

"In the second place because, as the wrong relied upon was not a mere mistake or error committed in the enforcement of the state tax laws, but a systematic and intentional disregard of such laws by the state officers for the purpose of destroying the rights of the whole class of non-competent Indians who were subject to the protection of the United States, it follows that such class wrong and disregard of the State Statute gave rise to the right to invoke the interposition of a court of equity in order that an adequate remedy might be afforded."

In *Iowa Central Railway Co. vs. Board of Review*, 157 N. W. 731, the Supreme Court of Iowa says:

"The paramount object of the law in distributing the burden of taxation is equality, and though property of a taxpayer is assessed at less than its true value, yet if it is assessed higher in proportion than other property, he has a just cause of complaint."

The case of *People vs. C., B. & Q. R. R. Co.*, 133 N. E. 325 (Illinois) presents a situation very similar to the case at bar. The Court says (Syllabus one):

"When assessing authorities, in disregard of the Constitution and the law, have assessed property far below

its real cash value, they must follow the principle of uniformity and assess all persons and corporations at the same proportionate value."

And in the Opinion, at page 327, the Court says:

"It has been held by this court that taxing authorities have no justification in withdrawing any property from the protection of the constitutional principle of uniformity of taxation, as uniformity of taxation is required under the Constitution, and that a person cannot be compelled to pay a greater proportion of taxes, according to the value of his property, than another property owner. Board of Supervisors vs. Chicago, Burlington & Quincy Railroad Co., 44 Ill. 229; Chicago & Northwestern Railway Co. vs. Board of Supervisors, 44 Ill. 240. Where the assessing authorities have disregarded this provision of the Constitution and the law and have assessed property far below its real cash value, generally speaking, they must also follow the principle of uniformity, and 'their assessment of all persons and corporations * * * must be at the same proportionate value.'"

The responsibility for the discrimination which has been practiced against Petitioner rests, we think, as much with the Supreme Court and District Court of Nebraska as with the Board of Equalization. The Supreme Court in its opinion in Syllabus 2 (Record, p. 127), says:

"The findings of a board of equalization must be so manifestly wrong that reasonable minds could not differ thereon before this Court will disturb them."

But it is only necessary to read *Section 6440, Revised Statutes of Nebraska, 1913*, providing for appeals from the orders of the Board of Equalization to discover where the true responsibility rests. Among other things the Statute says:

"The court shall hear the appeal as in equity and without a jury, and *determine anew* all questions raised before the board which relate to the liability of the property to assessment, or the amount thereof * * *"

Thus the duty rested upon the District Court of Dakota County to determine as an original proposition, not only the valuation of Petitioner's property for assessment purposes, but the equalization of that value when compared to the assessment of others. The District Court of Dakota County was required by the Statute to hear the case as a court of equity and upon the merits. It was neither necessary nor proper to indulge any presumption in favor of the action of the Board of Equalization. Upon appeal of the case to the Supreme Court of Nebraska the action of the Supreme Court was governed by *Section 8198, Revised Statutes of Nebraska, 1913*, which says:

"In all appeals from the District Court to the Supreme Court in suits in equity, wherein review of some or all of the findings of fact of the District Court is asked by the appellant, it shall be the duty of the Supreme Court to retry the issue or issues of fact involved in the finding or findings of fact complained of upon the evidence presented in the bill of exceptions, and *upon trials de novo* of such question or questions of fact, reach an independent conclusion as to what finding or findings are required under the pleadings and all the evidence, without reference to the conclusion reached in the District Court or the fact that there may be some evidence in support thereof."

We cite these provisions of the Statute to show that the Supreme Court was wrong in attaching any importance to the finding of the Board of Equalization as to the value of Petitioner's property. Upon appeal to the Courts it rested upon the Courts of Nebraska as Courts of Equity to hear the evidence and make findings of fact in accordance

therewith irrespective of what conclusion may have been reached by the Board of Equalization of Dakota County. In the light of this duty resting upon the Supreme Court of Nebraska let us examine further into the facts shown by the record.

In appealing to the Board of Equalization of Dakota County and appealing thence to the District Court of Dakota County, and thence to the Supreme Court of Nebraska, Petitioner pursued the only remedy which the laws of Nebraska afford. The Supreme Court says in its opinion that Petitioner's remedy was to have the valuations of other taxpayers raised rather than to ask to have Petitioner's own valuation reduced. But clearly this is misconception of the Statute.

Section 6140, Revised Statutes Nebraska, 1913, providing for appeals from the Board of Equalization to the District Court is a part of Article 10, Chapter 69, of the same statute. The only possible basis, so far as we can discover, for the Supreme Court's statement of the correct remedy to be pursued in such cases is the language found in *Section 6437, same Statute*. That section embraces five paragraphs, as follows:

“The county board shall hold a session of not less than three and not more than twenty days, for the purpose contemplated in this section, commencing on the first Tuesday after the second Monday of June each year, and shall:

“First—Fairly and impartially equalize the valuation of the personal property of the county, and to that end shall, on the application of any person who shall deem himself aggrieved, or who shall complain that another is assessed too low, review the assessment and correct the same as shall appear to be just.

"Second—At its meeting in 1912 and every second year thereafter equalize the valuation of real property of the county by raising the valuation of such tracts and lots as are assessed too low, and lowering the valuation of such tracts and lots as are assessed too high; but in cases of evident error of assessment or of apparent gross injustice in overvaluation or undervaluation of real property, the county board of equalization may at its annual meetings consider and correct the same by raising, after due notice has been given to the interested party or parties, or by lowering the assessed valuation of such real property. In cases where farm lands or real property consisting of city, town, or village blocks or lots have been assessed as entities and after time of such assessment part or parts of such entities have been transferred by the owner or owners thereof to another party or to other parties by sale or otherwise, then the county board may at such annual meeting as board of equalization apportion the just and equitable proportion of the assessed valuation of such entities to the various parcels of lands into which such entities have by transfer of title been divided, upon notice given to the parties of such transfer.

"Third—Ascertain whether the valuation of one township, precinct or district bears just relation to all townships, precincts or districts in the county; and may increase or diminish the aggregate valuation of property in any township, precinct or district, by adding or deducting such sum upon the hundred as may be necessary to produce a just relation between all the valuations of the property in the county. It may consider lands, village or city lots and personal property and different classes of personal property, except property assessed or valued by the state board of equalization and assessment, separately, and determine a separate rate per cent of addition or reduction for each of the classes of property as may be necessary to adjust the equalization thereof.

"Fourth—Adjust assessments for the county by raising or lowering the assessment of any person as to any

or all items of his assessment in such manner as to secure the listing of property at its actual value and the assessment of property at its taxable value; but in no case shall the assessment of any person be raised by the board until such person or his agent shall be previously notified, if such person or his agent be found in the county.

“Fifth—Also add to the assessment rolls any taxable property not included therein, assessing the same in the name of the owners thereof as the assessor should have done, but no personal property shall be so added unless the owner thereof is previously notified, if he be found in the county.”

Paragraph first, says, as to the duties of the Board of Equalization, that they shall

“Fairly and impartially equalize the valuation of the *personal property of the county* and to that end shall, on the application of any person *who shall deem himself aggrieved* OR who shall complain that another is assessed too low, review the assessment and correct the same as shall appear to be just.”

That paragraph relates entirely to personal property.

The Petitioner's property is declared, by *Section 6364 same Statutes*, to be personal property and to be assessed as such. Therefore Petitioner came within the definition of those who should be heard as to personal property assessment

“on the application of any person who shall deem himself aggrieved.”

Petitioner deemed itself aggrieved because the assessed value of its property was more than the true value and also because the assessed value and the true value were both out

of proportion to the assessed value of real estate and other property. If Petitioner had not come within the definition of the class of persons "who shall deem himself aggrieved" then the alternative provision of the section therefore applied and would have given Petitioner, as merely a complainant, the right to complain under the language "*OR who shall complain that another is assessed too low.*" So that in complaining to the Board of Equalization that it was aggrieved at the valuation placed upon its property, Petitioner placed itself in proper position to have whatever remedy the law and facts warrant. The tribunal it was appealing to was a Board of Equalization. Who, under the Statute, had the right to appear before that tribunal? Those who feel themselves aggrieved, or those who feel that others were assessed too low. Petitioner answered to the first description and possibly also to the second, but in either capacity Petitioner was entitled to be equalized according to the Constitution and Statutes.

What Petitioner was asking for was equalization. That is all it could receive in the way of a remedy at the hands of a Board of Equalization. It would seem to be immaterial whether Petitioner presented itself before the Board as one having a grievance, or one claiming others were assessed too low, or as John Smith, or Henry Brown, or by some other name or title. The only thing provided for as constituting the function of the Board of Equalization was to equalize assessments.

From its order in that respect an appeal was provided to the District Court where all questions were to be considered anew and the matter was to be tried by the Court sitting as a court of equity. From that Court, under general statutes, an appeal is provided to the Supreme Court, who in turn must try the case *de novo* on the record.

Moreover the second paragraph of *Section 6437 Revised Statutes Nebraska, 1913*, provides that real estate values shall be equalized every two years commencing with the year 1912.

This case was presented at the 1918 annual meeting of the Board of Equalization, which was the proper year under the Statute for it to equalize real estate assessments by raising those which were too low and lowering those which were too high. There is nothing in the second paragraph of Section 6437 which expressly authorizes a taxpayer to make a complaint against the assessment of others on the ground that it is too low. The Statute appears to give that right only with respect to personal property assessments.

As we understand *Section 6437* the first paragraph relates to the equalization of personal property. The second paragraph relates to the equalization of real property. The third paragraph relates to equalization as between subdivisions of the county. The fourth paragraph relates to equalization over the entire county as a whole. The fifth paragraph authorizes the addition to the taxroll of property which had been omitted from assessment.

What Petitioner complains about on the subject of discrimination is that real estate (Dakota County is a farming community) is grossly undervalued, while Petitioner's property, which the Statute calls "personal property," is grossly overvalued.

The remedy afforded by the State law to correct such a discrimination is, we think, a complaint before the Board of Equalization and appeal therefrom to the District Court, thence to the Supreme Court as pointed out. The evil of

the situation is that the courts, an appeal to which is provided by the Statute, have denied judicial relief on a subject which the Statute makes it their duty to remedy, each court acting on its own responsibility and without regard to the action of the Board of Equalization.

Even if Petitioner had desired to attempt some action against the County Board of Equalization or the County Assessor to compel him or them to raise the assessment on other taxpayers in the County up to the level of Petitioner's valuation, there is no way provided by law in Nebraska for accomplishing that end. Mandamus would not afford a remedy because *Section 8272 Revised Statutes Nebraska, 1913*, concerning mandamus says:

"This writ may not be issued in any case where there is a plain and adequate remedy in the ordinary course of the law. It may issue upon the information of the party beneficially interested."

A plain, adequate remedy at law has been provided by appeals to and from the County Board of Equalization, thence to the District Court, thence to the Supreme Court. Petitioner's grievance lies not in the lack of proper remedy, but the refusal of all the tribunals which the law has charged with the duty of equalizing Petitioner's assessment to equalize the same. Petitioner is denied judicial relief in violation of the Constitution and Statutes of the State.

II.

The Sioux City Bridge Company property in Dakota County is not worth \$700,000.00 for taxing purposes, but only about half that amount.

III.

The Board of Equalization of Dakota County increased the valuation of petitioner's property from \$600,000.00 to \$700,000.00 without any evidence whatever.

The foregoing statements should be considered together. The testimony of J. P. Rockwell, County Assessor (Record, pp. 13 to 22), shows that neither the County Assessor nor the Board of Equalization had any information as to the value of the bridge. Thus at Record, page 21:

"Q. Now you spoke of viewing the bridge and approaches. You may state whether or not you had any knowledge, or have any now, of the cost of materials, either originally, or at the present time, of the bridge or the approaches?

A. No.

Q. Did you have any knowledge of the cost of the work and labor involved in either structure?

A. No, sir, not of my own knowledge.

Q. And no member of the Board of Equalization had any such information as far as you know?

A. As far as I know.

Q. There was no such information expressed by any one before the Board of Equalization that took this action, was there?

A. Why, I do not know what might have been expressed in some of the talk that came up I am sure.

Q. There was no evidence offered by witnesses?

A. There was never—

Q. As to any of the details of the cost of materials or labor involved in the structure?

A. No."

From Record, page 13:

- "Q. You may state who, if any one, appeared as witnesses before that Board of Equalization on the question of the value of that bridge?
- A. Well, I do not think that the Board of Equalization had any witnesses. They did arrive at their conclusion from what they knew of the bridge and what they knew of the value of the property.
- Q. You did not subpoena any witnesses?
- A. We did not subpoena any witnesses to take their evidence."

From Record, page 14:

- "Q. There was no witness appeared before the Board on the question of value, was there?
- A. No, I do not think there was.
- Q. And there was nothing before the Board to show the original cost of either the bridge or the approach, was there, Mr. Rockwell?
- A. No, I do not think there was?"

As already observed, this bridge had been valued at \$600,000.00 for taxing purposes for a great many years, apparently because no one objected to the valuation. For the year 1918 the County authorities raised the valuation to \$700,000.00. On the question of the reason for this increased valuation, the record shows (page 16):

- "Q. What, if anything, did the Board have before it with respect to any increase in value of the bridge structure proper as against previous years?
- A. They did not have any evidence.
- Q. No evidence at all? The increase of \$50,000.00 on the bridge was made without any evidence at all?
- A. Well—

Q. As far as any evidence went?

A. The only evidence we had was that property generally had increased in value since that assessment was made, some ten years before that, or some time before that, at least, that other property had raised in value—other personal property and real estate had all raised in value, and the bridge had remained still at the same assessment—the same price that it had been assessed at in 1912 I think. I am not sure when the former assessment was made.

Q. You mean the surrounding farming community property had increased in value?

A. Yes, sir.

Q. Was any complaint of any kind filed by any one before the Board of Equalization that the assessment of the Sioux City Bridge Company property had been too low?

A. Nothing only what I said myself, that I thought it was too low under these existing circumstances.

Q. Was any statement—any written statement filed with the Board by any one, including yourself, on the subject of the previous valuation and the proposed raise?

A. I do not think there was.

Q. Have you had any experience as a railroad builder?

A. No, sir.

Q. Nor as a bridge builder?

A. No, sir.

Q. Or as a railroad operator?

A. No, sir.

Q. And are you familiar with the other members of the Board of Equalization?

A. I think so.

Q. Had any of them had any such experience which I inquired of you regarding?

A. I do not think they had."

There was no evidence before the District Court of Dakota County, who, under the Statutes, was obliged to hear the case as a court of equity and determine anew all questions with respect to the valuation of Petitioner's property, which could have justified the District Court in sustaining the raise in valuation from \$600,000.00 to \$700,000.00. Indeed the evidence as to the value of the property was very much the other way.

On the question of the value of the bridge property but two witnesses testified; H. Rettinghouse (Record, pp. 51 to 61), and F. P. Darrow (Record, pp. 62 to 74).

Mr. Rettinghouse testified that he is the Chief Engineer of the Sioux City Bridge Company and has had charge of the bridge property for five years; that the bridge was built thirty years ago at a time when present day traffic was not dreamed of and that the bridge is entirely out of date for modern traffic. That the bridge was designed and is useful only for railroad purposes, and that while the present physical condition of the bridge is very good, the bridge will not carry modern traffic, and it is impossible to use the bridge as ordinary railroad mileage, as it will not sustain modern locomotives. It is necessary to use the bridge in a very restricted way because it is not strong enough for modern traffic; and he testified that assuming that the original cost of the bridge was approximately \$950,000.00 (as shown by the record) he estimated the depreciation in value at the present time to be not less than \$200,000.00. A reading of the entire testimony of Mr. Rettinghouse will disclose that his estimate was based upon an intimate acquaintance with the bridge and with railroad problems.

Mr. Darrow testified from a wealth of experience with bridges on the Burlington Railroad, of which he is Engineer,

that the bridge is obsolete and will not carry modern traffic and he placed the depreciation at \$300,000.00 from the original cost (Record, p. 69).

The Supreme Court in its opinion refers to the testimony of these two witnesses and does not refer to any other testimony on the subject of depreciation because there were no other witnesses on the subject. One conclusion they reached, based upon this testimony, is that the portion of the bridge in Dakota County is worth \$528,148.00 and on the other estimate \$533,098.00. Notwithstanding this, the valuation of \$700,000.00 is permitted to stand. Considering the duty of the Supreme Court to find the facts de novo as required by the Statute, it is difficult to understand by what method of reasoning they arrived at the value of \$700,000.00 for petitioner's property.

IV.

It is undisputed that real estate and other property in Dakota County and the vicinity of petitioner's bridge is assessed at only about 55% of its true value.

If it be conceded, for the purpose of argument, that Petitioner's property is shown to be worth \$700,000.00, yet under the undisputed evidence, Petitioner was entitled to have the same percentage of actual value applied to its property for assessment purposes as was enjoyed by other taxpayers in the county.

The testimony of Thomas A. Polleys (record, pp. 79 to 101), is undisputed that real estate in Dakota County, which constitutes the overwhelming majority of taxable property, is assessed only about 55% of its true value. That such is the state of the testimony is assumed by the Supreme Court in its opinion, where it says:

"Where property is assessed for taxation at its true value, and other property in the district is assessed at 55% of its true value, the remedy, to secure equal taxation is to have the property assessed below its true value raised, rather than to have the property assessed at its true value reduced."

A similar situation was presented to this Court in *Greene vs. Louisville & Interurban R. R. Co.*, 244 U. S., *supra*, where the court said at pages 512, 513:

"The fact should be emphasized that the Kentucky Court of last resort, far from holding that discrimination such as is here complained of is in accord with the constitution and laws of the state, has recognized distinctly that it is not; but has felt constrained to hold that, under circumstances similar to those of the present cases, there is no redress in the courts of the state; and that the constitutional provisions for equality and uniformity are capable of being put into execution only through the selection of proper officers. *Louisville Ry. Co. vs. Commonwealth*, 105 Ky. 710, 719. This, while admitting the wrong, merely denies judicial relief, and is not binding upon the federal courts."

In much the same way the Supreme Court of Nebraska admits the injustice which has been practiced against Petitioner, because it says, immediately following the language last above quoted from its opinion:

"Section 6300, Revised Statutes, 1913, contemplates that all property be assessed at its true value."

But the procedure of having re-assessments made against other property in the County so as to bring the valuation to the level of true value, this Court said in the *Green* case, *supra*, page 521:

"There is nothing in these provisions to indicate that parties in the situation of the present appellees, who

have no different interest in the undervaluation by the county assessors than that which might be possessed by any other citizens of the state, are entitled to be heard to complain that the county assessments are too low. Nor is any case cited where such a complaint has been entertained. The remedy of re-assessment appears to be a public, not a private remedy."

CONCLUSION

"The equal protection of the law is a pledge of the protection of equal laws."

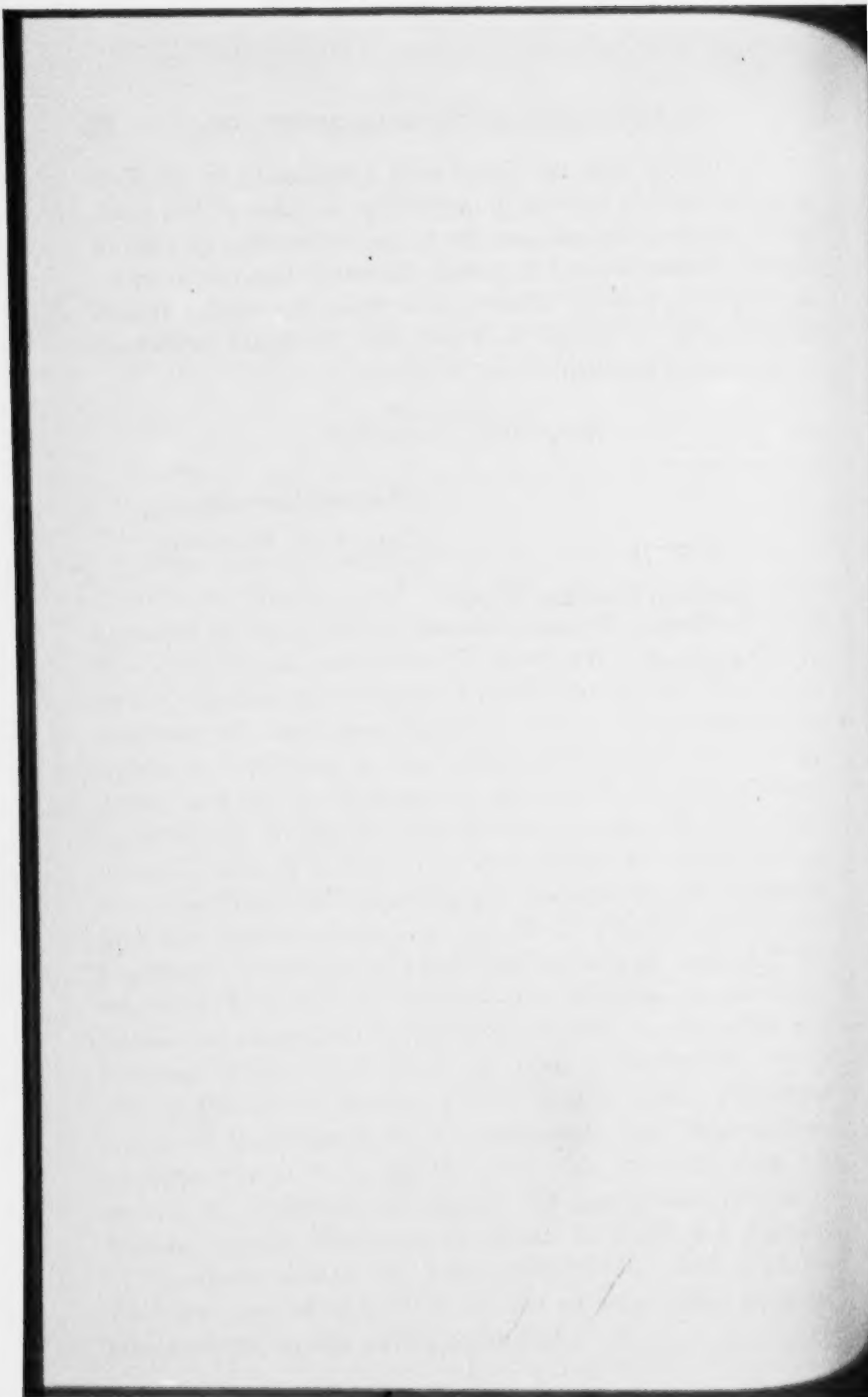
This was the language of Mr. Justice Matthews in *Yick Wo vs. Hopkins*, 118 U. S. 356, 369, and quoted with approval by Chief Justice Taft in *Truax vs. Corrigan*, *supra*. The Constitution and Laws of Nebraska were designed to secure equality of treatment between taxpayers. The mere *existence* of equal laws does not satisfy the constitutional rights of Petitioner to the *equal protection* of the law, as guaranteed by the Fourteenth Amendment to the Federal Constitution. Petitioner must be able to enjoy the *protection* of equal laws. Petitioner has been denied the protection of the Constitution of Nebraska and the Statutes of Nebraska and the highest Court of the State has expressly and knowingly permitted a great discrimination against Petitioner in the matter of taxation. The Supreme Court of the State has recognized in its Opinion that a wrongful discrimination has been practiced against Petitioner, but it denies Petitioner judicial relief. If the equal protection clause of the Fourteenth Amendment to the Federal Constitution "is a pledge of the *protection* of equal laws" it should be construed to compel the taxing authorities of Dakota County, Nebraska, to accord to Petitioner equality of treatment under the State Constitution and Statutes. Fair laws can be of no value to the citizens unless honestly administered by the public authorities.

We believe that the Fourteenth Amendment to the Federal Constitution extends its protection to cases of this kind, and we respectfully ask that the taxing authorities of Dakota County, Nebraska, and the State Courts, whose duty under the Statutes, it is to hear appeals from the taxing board, be compelled to accord to Petitioner the equal protection of the State Constitution and Statutes.

Respectfully submitted,

WYMER DRESSLER,
Counsel for Petitioner.

F. W. SARGENT, Chicago, Illinois.
R. N. VANDOREN, Chicago, Illinois,
Of Counsel.



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WM. R. STANSBURY
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IN THE
Supreme Court of the United States.

OCTOBER TERM, 1921.

No.  105

SIOUX CITY BRIDGE COMPANY,
Petitioner,

vs.

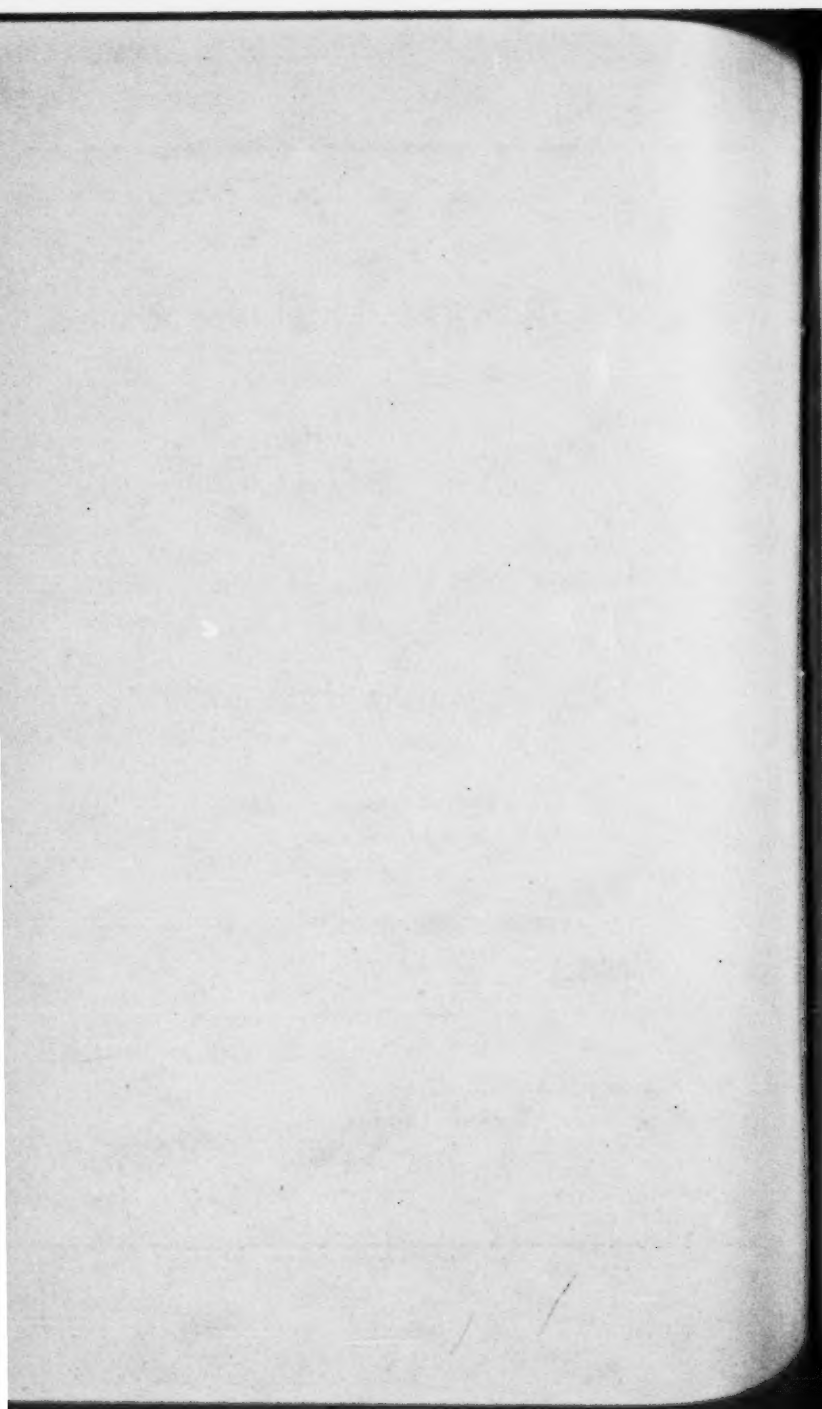
DAKOTA COUNTY, NEBRASKA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF NEBRASKA.

REPLY BRIEF OF PETITIONER.

WYMER DRESSLER,
Counsel for Petitioner.

F. W. SARGENT, Chicago, Illinois,
R. N. VAN DOREN, Chicago, Illinois,
Of Counsel.



IN THE
Supreme Court of the United States.

OCTOBER TERM, 1921.

No. 381.

SIOUX CITY BRIDGE COMPANY,
Petitioner,
vs.
DAKOTA COUNTY, NEBRASKA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF NEBRASKA.

REPLY BRIEF OF PETITIONER.

I.

Respondent concedes that petitioner is entitled to relief under the Fourteenth Amendment if the discrimination complained of exists. (See Respondent's Brief, page 15.)

II.

The Supreme Court of Nebraska concedes the discrimination (R. 129), but denies relief upon the ground that "the proper remedy is to have the property as-

sessed below its true value raised rather than to have property assessed at its true value reduced." (R. 129.)

The Supreme Court of Nebraska also concedes that this rule is in conflict with authorities in other jurisdictions. (R. 129.)

The judgment of the Supreme Court of Nebraska was not based upon the ground that petitioner was not aggrieved, as now contended by respondent, but upon the ground that it was petitioner's duty to cause all other property to be raised rather than to have its own lowered to meet the general level.

III.

Therefore, the only question before this court is one of law, and it is unnecessary to review the facts, although the record clearly shows that other property was assessed at 55 per cent and petitioner's property at 100 per cent or more of its value.

IV.

If it should be contended that the Supreme Court of Nebraska has not found the discrimination to exist, then it must be conceded that it has made no finding at all on this question, and has refused to consider the same upon the theory and for the erroneous reason that petitioner must cause all other property to be raised rather than have its value lowered to the general level.

In either event the question is one of law.

V.

The Nebraska rule conflicts with the great weight of the decisions in other states.

Illinois.

- People v. C. B. & Q. Ry.*, 300 Ill., at page 404.
Supervisors of Bureau County v. C. B. & Q., 44 Ill. 229.
C. & N. W. R. R. v. Supervisors of Boone County, 44 Ill. 240.
People v. Illinois Central R. R. Co., 273 Ill. 220.
People v. Keokuk & Hamilton Bridge Co., 287 Ill. 246.

Texas.

- Porter v. Langley*, 155 S. W. 1042.

Iowa.

- Iowa Central Railroad v. Board of Review*, 157 N. W. 731.

Arkansas.

- Ex parte Fort Smith & Van Buren Bridge Co.*, 36 S. W. 1060.

New Hampshire.

- Cochecho Co. v. Stratford*, 51 N. H. 455.

Connecticut.

- Randall v. City of Bridgeport*, 63 Conn. 321; 28 Atl. 523.

Kansas.

C. B. & Q. R. R. v. Board of Commissioners of Atchison County, 54 Kan. 781; 39 Pac. 1039.

The Nebraska rule is also contrary to the federal decisions and invades petitioner's rights protected by the Fourteenth Amendment.

Taylor, et al., v. Louisville & N. R. Co., 88 Fed. 350.

See also cases cited in petitioner's original brief, page 11.

CONCLUSION.

The error of the Supreme Court of Nebraska consists in the refusal to equalize upon the ground that petitioner must assume the political duty of compelling administrative officers to raise the value of each separate tract or parcel of property belonging to each separate taxpayer in the taxing district.

Petitioner's position is most clearly expressed by the opinion in the Taylor case, *supra*. After stating that discrimination existed, the court said:

"This is a flagrant violation of the clause of the Constitution forbidding discrimination in taxation between different species of property. That clause is self-executing. *Reelfoot Lake Levy District v. Dawson*, 97 Tenn. 160; 36 S. W. 1043. *How is it to be remedied? It is said on behalf of the defendants that the only method consistent with the Constitution is by raising the assessments of the real and personal property. This is no remedy at all.*"

What was true in the Taylor case is equally true in the case at bar. It cannot be possible that to secure equal treatment in taxation the individual is charged

with the burden and expense of making every other taxpayer in the taxing district a party defendant and then proceeding to a trial to be conducted by the aggrieved party, for the purpose of raising the value of each separate piece or parcel of property in the district belonging to each separate taxpayer. This is a duty imposed by the law of Nebraska upon the administrative and judicial officers charged with the administration of the statutes, and to require the individual to perform the public or political obligations incumbent upon the state as a whole, in order to secure equality, is to deny to the individual the equal protection of the laws.

The Supreme Court of Nebraska says petitioner did not follow the proper remedy, and that we should have compelled every other taxpayer to bear his equal proportion of the tax burden. Just how we would proceed has never been demonstrated. The Supreme Court of Nebraska did not suggest the method in this case, neither did it suggest the method in the preceding case which it cites as authority in this case, to wit: the case of *Lincoln Telephone & Telegraph Co. v. Johnson Co.*, 102 Nebr. 254.

Respondent makes no suggestion as to the method which might be pursued. We are unable to discover what this remedy is and how it can be applied in any practical way. Indeed, we know of no legal procedure available unless it is to bring some sort of an action against every other taxpayer in the district as well as against the assessing authorities, for certainly every other taxpayer would be entitled to his or her day in court if the remedy suggested is to be pursued. That such a procedure would be impracticable is clearly apparent. See Taylor case, *supra*.

Even if some theory might be devised to apply the

remedy suggested, nevertheless it still remains true that the aggrieved party is thereby required, at his own expense, to assume the burdens of government and to discharge an obligation, in order to protect himself, that the people have lodged in their administrative and judicial tribunals.

Real estate in Dakota County was assessed at the average value of \$61.40 an acre, including improvements. This was 55.7 per cent of its true value, as shown by the assessment ratio process based upon the numerous transfers of real estate, as shown by the official records of the office of the County Recorder. (Record 84; also 79 to 84, inclusive; also 96.)

The court will take judicial notice of the fact that Dakota County is located in the northeast corner of Nebraska, the richest agricultural portion of that State. It is quite apparent that no one will seriously contend that \$61.40 an acre is the full value of agricultural land in such a territory. And this was the value assessed in the year when wheat was worth on the farm \$2.00 a bushel, corn \$1.25 per bushel and oats 50c per bushel. (R. 114.)

The Supreme Court of Nebraska clearly recognized that the great weight of the evidence established discrimination. It could not do otherwise under the showing made. It disposed of this branch of the case by conceding the discrimination, and said:

"When property is assessed at its true value and other property in the district is assessed below its true value, the proper remedy is to have the property assessed below its true value raised rather than to have property assessed at its true value reduced. *Lincoln Telephone & Telegraph Co. v. Johnson Co.* 102 Nebr. 254. In the argument of appellant the soundness of this ruling is assailed, and authorities in other jurisdictions are cited which seem at

variance with our holding. We are not willing, however, to recede from the rule of that case. It follows from what has been said that the judgment of the District Court should be and it hereby is affirmed."

We respectfully submit that this cause should be reversed.

Respectfully submitted,

WYMER DRESSLER,

Counsel for Petitioner.

F. W. SARGENT, Chicago, Illinois,

R. N. VAN DOREN, Chicago, Illinois,

Of Counsel.



**IN THE
SUPREME COURT OF THE
UNITED STATES**

Number 381

SIOUX CITY BRIDGE COMPANY,
Petitioner,
vs.
DAKOTA COUNTY, NEBRASKA,
Respondent.

In the Matter of the Application of Sioux City Bridge Company for a Writ of Certiorari to the Supreme Court of the State of Nebraska.

**PETITION FOR REHEARING OF APPLICATION FOR
WRIT OF CERTIORARI**

To the Honorable, the Chief Justice and Associate Justices
of the Supreme Court of the United States:

Comes now the Sioux City Bridge Company and respectfully prays the Court to set aside the order of dismissal lately entered in this cause, on the ground that the petition was not presented to the Court on motion day, and to grant a rehearing on said petition for Certiorari on its merits for the following reasons:

1. Counsel for Petitioner was mislead as to the custom and practice concerning petitions for certiorari and by reason thereof did not appear before the Court personally to present said petition, nor request the clerk in writing so to do by the following circumstance:

At the commencement of the October, 1920, term, counsel for petitioner had on file in this Court a similar application in the case of *Chicago & North Western Railway Company vs. C. C. Whitnack Produce Co.*, and counsel made a trip from Omaha, Nebraska, to Washington, D. C., to personally present said petition to the Court. Upon arrival at the office of Hon. James D. Maher, Clerk of the Court, counsel was advised that the court preferred that the clerk present such petition and that counsel not appear before the Court for that purpose, and the clerk exhibited to counsel a list of more than a dozen cases on application for certiorari, and at that time the case in which counsel was interested already appeared on the list which the clerk had prepared for presentation to the Court. Counsel had not requested the clerk either in writing or orally to present said petition. Counsel understood that the clerk, without request, presented all such matter to the Court because that was the method the Court preferred to have followed. On that occasion, therefore, the clerk presented the petition to the Court and counsel did not appear, notwithstanding he made the trip to Washington for that purpose. Relying upon that understanding of the custom and practice, counsel did not go to Washington to present the petition personally, but fully expected the Clerk of the Court to present the petition in accordance with the custom above explained.

2. At the time of the opening of the October, 1921, term of this Court, counsel was actually engaged as counsel for defendant in the trial of an important suit in the District Court of Brown County, Nebraska, in which the Di-

rector General of Railroads, Agent of the President, was defendant.

3. The matter involved in the petition for certiorari is of very great importance, both to the petitioner and to the public, and justice will be greatly promoted by having said petition for certiorari considered by the Court upon its merit.

-----**Wymer Dressler**-----

Counsel for Petitioner.

STATE OF NEBRASKA }
 COUNTY OF DOUGLAS } ss.

Wymer Dressler, being first duly sworn on oath deposes and says that he is counsel for petitioner in above case and had conducted said litigation through the various State Courts and prepared the petition for certiorari in this cause; that the foregoing explanation of his failure to appear before the Court or request the clerk in writing to present the petition for certiorari is true, and that the other statements contained above are true.

-----**Wymer Dressler**-----

Subscribed in my presence and sworn to before me this 29th day of October, 1921.

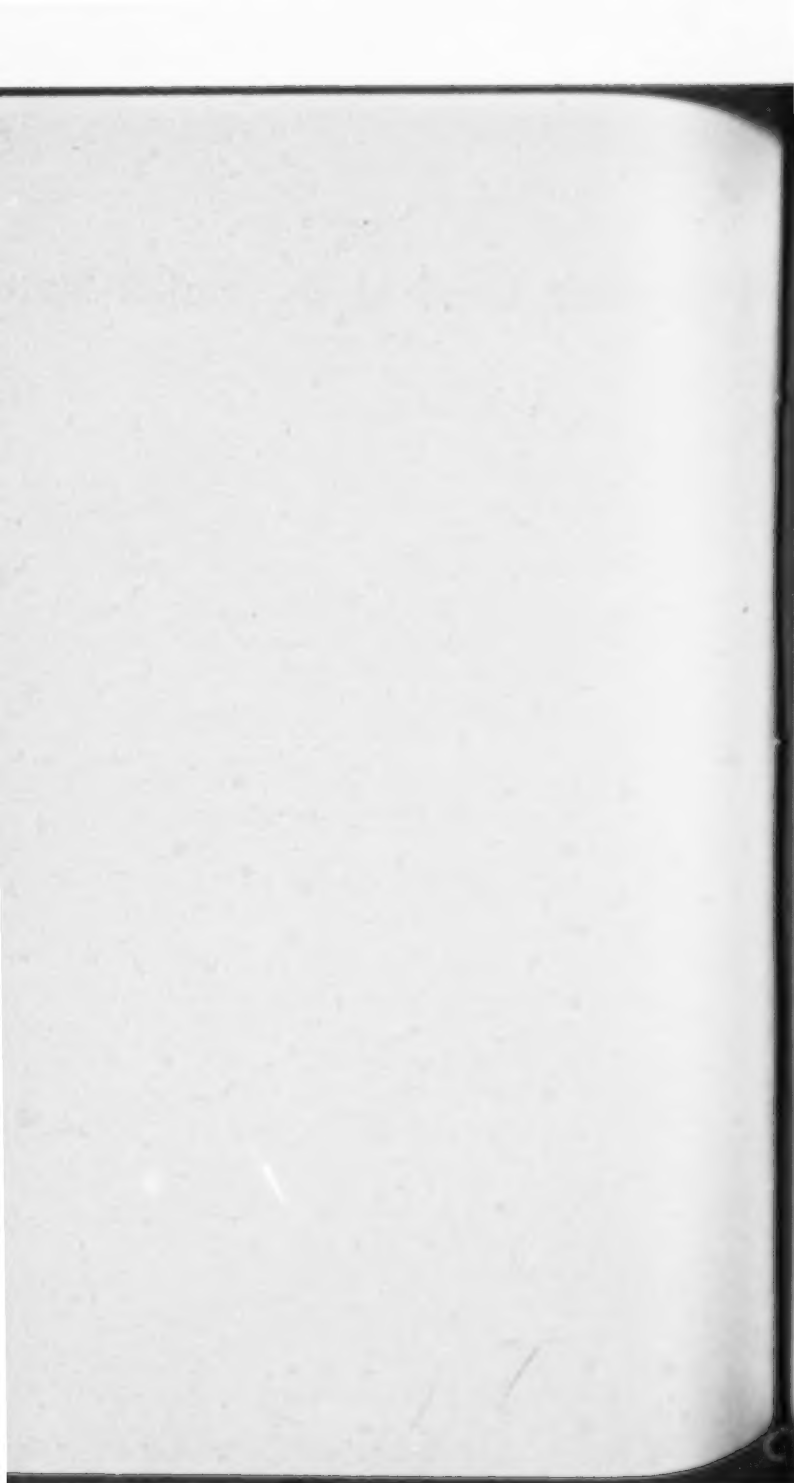
Notary Public, Douglas County.

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IN THE
Supreme Court of the United States

October Term, 1921

Number 381

SIoux CITY BRIDGE COMPANY,
Petitioner,
vs.
DAKOTA COUNTY, NEBRASKA,
Respondent.

ON A WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF NEBRASKA

BRIEF OF RESPONDENT

STATEMENT OF CASE

This case is here on writ of certiorari to the Supreme Court of Nebraska. Petitioner complains that discrimination has been practiced against it and that thereby it has been denied equal protection of the law and due process of law in violation of the Constitution and Laws of the State of Nebraska, and in violation of the Fourteenth Amendment to the Constitution of the United States.

The Sioux City Bridge Company is a corporation organized under the laws of the State of Iowa, and is the owner of a certain railway bridge located at Sioux City, Iowa,

spaning the Missouri River. A portion of said bridge is in the State of Iowa and a portion in Dakota County, Nebraska. The controversy in this case is the valuation of that portion of the said bridge in Dakota County, Nebraska, for taxing purposes, as well as the question of discrimination which petitioner claims to have been practiced against it.

Section 1, Article 9, Constitution of Nebraska, provides:

"The legislature shall provide such revenue as may be needed by levying a tax by valuation so that every person and corporation shall pay a tax in proportion to the value of his, her or its property and franchises, the value to be ascertained in such manner as the legislature shall direct * * *."

Section 6300, Revised Statutes Nebraska, 1913, provides:

"All property in this state not expressly exempt therefrom shall be subject to taxation, and shall be valued at its actual value, which shall be entered opposite each item and shall be assessed at twenty per cent of such actual value. Such assessed value shall be entered in separate column opposite each item, and shall be taken and considered as the taxable value of such property, and the value at which it shall be listed and upon which the levy shall be made. Actual value as used in this chapter shall mean its value in the market in the ordinary course of trade."

Section 6364, Revised Statutes of Nebraska, 1913, provides:

"All persons, companies, or corporations owning, controlling, or operating any highway or railway bridge independent of any railway system over any stream or river forming the boundary line between this and any other state, shall be required to list the same for taxation, and the same shall be assessed and taxed at its full true value in money as personal property. In arriving at one-fifth of such value if such bridge is con-

structed over a navigable stream the value of the same to the center of the channel of such stream together with all rights, privileges, and franchises connected therewith or belonging thereto, shall be taken into consideration in ascertaining the true value of such bridge property for taxation; and it shall be the duty of such person or companies or corporations by their president, vice president, managing agent or the superintendent of such bridge, to make out a return to the proper assessor, giving the dimensions of the bridge, in the county where it is located, together with a full statement of its rights, privileges, and franchises, and the same shall be returned by the assessor."

In Dakota County it had been the practice of the County Assessor for many years prior to 1918 to make out a schedule of the bridge property, listing the property as the Sioux City Bridge, fixing the valuation for taxing purposes and sending such schedule to the Bridge Company, or its agent, for signature.

In the spring of 1918 the County Assessor of Dakota County made out such schedule, regarding the property of the Sioux City Bridge Company in Dakota County, placing the value of its property in Dakota County at Six Hundred Thousand Dollars (\$600,000.00). Such schedule was forwarded to the taxing official of the Sioux City Bridge Company for signature. The Sioux City Bridge Company refused to sign the schedule on the ground that the valuation was excessive and returned the same to the County Assessor unsigned and requested that the valuation be fixed at a less amount.

The Assessor refused to reduce the valuation and made an entry upon his books that the value of the Sioux City Bridge Company for taxing purposes was \$600,000.00. The Sioux City Bridge Company appealed to the Board of Equalization of Dakota County for relief.

In this appeal the tax agent of petitioner appeared before the County Board of Equalization at its annual meeting. The proceedings there held are deducible from the evidence of Mr. Rockwell, County Assessor of Dakota County, acting as witness for the petitioner. He was asked:

Q. Mr. Rockwell, you were present when the Board of Equalization met at each one of their sessions? (B. of Ex., p. 18, Q. 73.)

A. Yes, sir.

Q. Mr. Miller appeared for the Chicago, St. Paul, Minneapolis & Omaha, Railway Company? (B. of Ex., p. 18, Q. 74.)

A. He appeared for the Bridge I think.

Q. For the Bridge Company? (B. of Ex., p. 19, Q. 75.)

A. Yes, sir.

Q. The Sioux City Bridge Company? (B. of Ex., p. 19, Q. 76.)

A. Yes, sir.

Q. What complaint did he make before the Board of Equalization at that time? (B. of Ex., p. 19, Q. 77.)

A. Well, his contention was that the Bridge was assessed too high and he asked that it be reduced \$100,00, if I remember correctly, from what it had been assessed at for the years previous to that.

Q. He was before the Board of Equalization on two or three different dates? (B. of Ex., p. 19, Q. 78.)

A. Yes, sir.

Q. And he presented to the Board figures? (B. of Ex., p. 19, Q. 79.)

A. Yes, sir.

Q. And facts? (B. of Ex., p. 19, Q. 80.)

A. Yes, sir.

Q. From his memoranda? (B. of Ex., p. 19, Q. 81.)

A. Yes, sir, he had a memorandum.

On June 18, 1918, the Board of Equalization by its order increased the valuation of that portion of the bridge in Dakota County for taxing purposes to \$700,000. The order of the Board of Equalization is set out in the brief of the petitioner.

From this order of the Board of Equalization petitioner perfected an appeal to the District Court of Dakota County as provided by Section 6440, Revised Statutes of Nebraska, 1913.

Issue was joined by Dakota County in the District Court and a trial *de novo* was had. The District Court entered its decree fixing the valuation at \$700,000.00. From this decree petitioner appealed to the Supreme Court of Nebraska. The Supreme Court of Nebraska reviewed and affirmed the findings of the District Court of Dakota County. The evidence before the District Court and before the Supreme Court show conclusively that the property of the petitioner had been valued for taxing purposes at its true value and that other property in Dakota County had been universally valued at its true value for taxing purposes.

The Supreme Court of Nebraska held (Syl. 4):

"The evidence held to sustain the assessment of the bridge property."

TO OUR MIND THE QUESTIONS INVOLVED IN THIS CASE ARE TWO QUESTIONS OF FACT, AS FOLLOWS:

- I. What is the true value of the Bridge Property in Dakota County for the year 1918?
- II. Has there been practiced any discrimination in regard to petitioner's property for the year 1918?

ARGUMENT**I.**

The true value of the bridge property in Dakota County, Nebraska, for taxing purposes for the year 1918 is \$700,000.

We refer to the evidence. It shows that the total cost of building the bridge and its approaches was \$1,022,355.28 (B. of Ex., p. 33, Ex. 1), and that 73.8 per cent of said bridge lies in Dakota County, Nebraska (B. of Ex., p. 132, Qs. 555 and 556); \$754,689.76 is that part of the total cost of building said bridge lying in Dakota County, Nebraska.

H. Rettinghouse, Civil Engineer for the St. Paul, Minneapolis & Omaha Railroad Company, operating company for the Sioux City Bridge Company, testified that the physical condition of the bridge is very good (B. of Ex., p. 83, Q. 279).

F. T. Darrow, Civil Engineer for the Chicago, Burlington & Quincy Railway Company, testified for the Bridge Company that there is very little physical depreciation (B. of Ex., p. 120, Q. 494); that if said bridge were built today it would cost about fifty per cent more (B. of Ex., p. 121, Q. 500).

H. E. Barlow, Assistant Engineer for the Chicago, St. Paul, Minneapolis & Omaha Railway Company, testified for the Bridge Company that to build the bridge on April 1st of this year the figure given by Mr. Darrow is probably reasonably correct, fifty per cent greater than the original cost (B. of Ex., p. 133, Q. 560).

The evidence shows that the Sioux City Bridge Company has this bridge leased to the Chicago, St. Paul, Minneapolis & Omaha Railway Company (B. of Ex., p. 46, Ex. 5, Q. 175), and the Chicago, Burlington & Quincy Railway Com-

pany (B. of Ex., p. 33, Q. 171, Ex. 1), and that these agreements have been extended. Briefly it shows that the two railway companies pay the bridge company \$10,000 per annum for depreciation. The evidence further shows that this is the only railway bridge spanning the Missouri River going into Sioux City, Iowa (B. of Ex., p. 122, Q. 510).

Another fact that must be taken into consideration in arriving at the true value of the bridge is its prominence in being the only railroad bridge leading into Sioux City, Iowa, from northeast Nebraska, which makes it much more valuable because it dominates the railroad inlet from northeast Nebraska into Sioux City, Iowa, and the railroad outlet from Sioux City, Iowa, into northeast Nebraska. Another thing that must be taken into consideration is the Act of Congress (B. of Ex., p. 127, Q. 529), which provides that the bridge company may charge rates of toll for transportation over said bridge as may be deemed proper and reasonable. This bridge was a toll bridge up to the middle of the year 1917, and after that it was leased by the railroad companies (B. of Ex., p. 75, Ex. 12½, Q. 236). It will be noted that the income from this bridge, while a toll bridge, was enormous; that in the year ending June 30, 1907, after deducting all expenses, the bridge company made almost 25 per cent on their investment, and for the next three months, as shown by the table, they were making more than 25 per cent on their investment.

Upon the testimony of the witnesses of the petitioner there is little if any physical depreciation of the bridge in question and to construct said bridge today it would cost \$1,500,000.00 which today would place the actual valuation of said bridge in Dakota County at \$1,110,000. The evidence also shows that the bridge dominates the inlet into Sioux City and that the tolls of the bridge before it was leased show it to be paying 25 per cent on its original cost.

In consideration of these facts the Supreme Court of Nebraska, in its opinion said (Syl. 1):

“In determining the true value of the bridge under the provisions of Section 6364, Revised Statutes, 1913, for tax purposes, all the elements which go to make up value should be considered. Generally, these are cost of construction, the life of the structure, depreciation, cost of reproduction, net earnings, value of stocks and bonds, and while none of these elements are controlling, each has its proper bearing upon the ultimate question of value.”

The Supreme Court further said:

“That notwithstanding that the bridge may be somewhat obsolescent in the light of present day demands, a fair analysis of the testimony indicates that in the past the owners of the bridge have not only received a fair interest rate upon the investment, but have also received the major part, if not all, of the original amount expended, and are still receiving a fair interest upon the original cost. * * * that upon a consideration of all the elements which go to make up value we are of the view that the finding of the Board of Equalization is not so manifestly wrong that we are justified in disturbing it.”

Respondent respectfully submits that from the evidence it firmly believes that the valuation of the bridge for taxing purposes, as fixed by the Board of Equalization, is, if anything, too low.

In this respect and before concluding this point, we wish to direct the court's attention to the holding of the Supreme Court of the State of Iowa in the matter of the *Sioux City Bridge Company vs. Iowa Board of Review*, 184 N. W. 743. In that case the Supreme Court of the State of Iowa affirmed the finding of the District Court assessing the

26% portion of the bridge located in Iowa, for taxing purposes, as of January 1st, 1919, at \$330,000.00. Upon this basis Dakota County, Nebraska, would be entitled to a valuation for taxing purposes of approximately \$1,000,000.00.

II.

There has not been practiced any discrimination in regard to petitioner's property for the year 1918.

J. P. Rockwell, County Assessor for Dakota County for the year 1918 upon direct examination by counsel for petitioner was asked:

- Q. What is the fact as to the value placed by you as assessor upon farm lands in the county as compared to the market value of such lands? (B. of Ex., p. 14, Q. 50.)
- A. The law provides that property shall be assessed at its real value, at its market value, and that property is valued by the precinct assessor at its real value, its actual value as far as to their ability to determine, and that is the basis on which the assessment is made, on its actual value.
- Q. Well, now, it is true, is it not, that as a matter of common knowledge, and as a fact, that farm lands are generally assessed in the county at only about fifty cents on the dollar? (B. of Ex., p. 14, Q. 53.)
- A. No, I do not think they are assessed at fifty per cent of their value.
- Q. Have you ever made a study of that, Mr. Rockwell? (B. of Ex., p. 15, Q. 55.)
- A. I have looked it up pretty well.
- Q. Do you mean to say, Mr. Rockwell, that a farm that is worth \$200.00 an acre is assessed at \$200.00 an acre for taxing purposes? (B. of Ex., p. 15, Q. 56.)
- A. Well, now, here is the proposition in that respect. A farm that is worth \$200.00 an acre would be assessed at \$200.00 an acre.

Q. It should be? (B. of Ex., p. 15, Q. 57.)

A. But here is the proposition in assessing real estate, its location to the market, its actual value, if put upon the market according to the judgment of the assessor. You may own a quarter section of land out here that you value at \$300.00 an acre, and I as a purchaser would not want to pay \$150.00 an acre. A willing bidder and willing seller would establish the price of that land. You might own a piece of land that adjoins Mr. Leamer and that Mr. Leamer would want it for some particular purpose, and he would give you more than that land is worth. That is not the true value. It is what the land generally is worth in the community that fixes the price that the assessor goes by in arranging the valuation of that land. For instance. There is land that has been sold in this precinct, the sale value of that land according to the record it sold for \$150.00 an acre. The assessed value was \$70.00 or \$80.00 an acre. Now, we say there is an instance where it is only assessed at fifty per cent of its actual value, but understand that the assessor in assessing that land takes into consideration things that make the value of that land. For instance, it is liable to be damaged by the Missouri River. I know one piece of land in particular that was sold for \$100.00 an acre and assessed at \$50.00. Now, that sale did not represent the real value of that land, because that land was sold by Mr. Mulhall to some fellow that did not know the Missouri River. The assessor that fixed that value of that land did know the Missouri River, and in six months after this sale was made that land that at that time amounted to about 160 acres, was cut down to less than ten acres by the action of the Missouri River. The assessor took that into consideration. The man who bought it did not know the conditions, and he, of course, lost the money he had in it.

Thomas A. Polley, tax commissioner for several railroads and the Sioux City Bridge Company, was one of the

witnesses for the Bridge Company, and it was attempted to be shown by his evidence that other property in Dakota County, Nebraska, was not assessed at the proper valuation, but upon a perusal of his answers it will be noted that his compilation of figures is very meager, and absolutely unreliable as a basis for decision for any court, and all his evidence is immaterial. His testimony shows that over a period of several years, he took the considerations of certain recorded deeds and compared them with the assessed value, and in that way attempted to show that as a whole in Dakota County, Nebraska, the assessed value was only a little over one-half of the actual value. Mr. Polley took only warranty deeds. He just took deeds that expressed a big consideration and the other deeds that did not look right to him he excluded. He took no court deeds or quit claim deeds (B. of Ex., p. 159, Q. 656), and no deeds on which there may be revenue stamps indicating the consideration to be thousands of dollars. His investigation was very incomplete (B. of Ex., p. 160, Qs. 660-661). He did not take sheriff deeds (B. of Ex., p. 161, Q. 667). Mr. Polley admitted on cross examination that he had a certain ratio, and any deeds that showed any variation lower or above this ratio he did not consider (B. of Ex., p. 161, Q. 666). He was asked:

- Q. Do you take referee's sales in Nebraska? (B. of Ex., p. 161, Q. 668.)
- A. Yes, sir, I take as many of those as we can get. Occasionally one is eliminated, for the reason that the ratio between the assessment and the stated price is apparently very abnormal at times.
- Q. Anything that don't look right you eliminate it and do not consider it? (B. of Ex., p. 62, Q. 669.)
- A. It may not look right to me at all, but if the ratio is somewhere within reaching distance of the standard that prevails in that communit we leave it in, but if it is abnormal we do not leave it in.

- Q. But to arrive at this ratio by taking all these deeds together, the figuring out of the value of those, and then the value of what the assessor * * * (B. of Ex., p. 162, Q. 670.)
- A. You will find that a great number of transactions—that the great majority of transactions come pretty close to a certain standard, parcel by parcel.

Then Mr. Polley attempted to show that South Sioux City, Nebraska, where the bridge is located, was far below other towns in the state in regard to the assessment of personal property, and he devised a ratio of a certain number of families in South Sioux City, Nebraska, compared to the value of the property they turned in to the assessor as compared with a like number of families in other cities of the same population to the value of property they turned in. This method is absolutely unreliable and should not be followed, for Mr. Polley admits on cross examination that South Sioux City, Nebraska, contains a great number of poor people, which is the tendency with a town close to a big city (B. of Ex., p. 164, Q. 686). The inaccuracy and the unreliability in this kind of a method of determining that the assessed value of the property is lower than the actual value is very apparent because communities vary so much, and with South Sioux City, which is a peculiar town because it contains a great number of poor people, the ratio system would be absolutely unreliable and maliciously misleading.

J. P. Rockwell, count assessor for Dakota County, Nebraska, testified and showed that in 1918 they assessed hogs at \$14.00 per hundred pounds (B. of Ex., p. 208, Q. 792), and that they placed different values on cattle, and that the different values on cattle were: yearlings from \$25.00 to \$35.00; two year olds from \$35.00 to \$45.00; and the three year olds from \$45.00 to \$55.00; cows from \$60.00

to \$75.00; fat cattle ten cents per pound flat (B. of Ex., p. 208, Q. 794). Mr. Rockwell said that the values were based on what the market was at that time (B. of Ex., p. 208, Q. 794). Corn was \$1.25 per bushel (B. of Ex., p. 208, Q. 797); that the value of wheat was \$2.00 per bushel (B. of Ex., p. 208, Q. 798); that no reduction was made on any of the money turned in (B. of Ex., p. 208, Q. 799), and that all personal property was assessed at its actual value (B. of Ex., p. 211, Q. 812).

Mr. Rockwell's evidence shows conclusively that all property, both personal and real, for the year 1918 was assessed at its true value.

In the light of the foregoing facts as adduced from the testimony of petitioner's own witnesses it is conclusively shown that all property, both personal and real, for the year 1918, in Dakota County, Nebraska, was assessed at its true value.

LAW

The Supreme Court of the State of Nebraska has held:

"That the finding of a Board of Equalization must be so manifestly wrong that reasonable minds could not differ thereon before this Court will disturb them."

Woods vs. Lincoln Gas & Electric Co., 74 Neb. 526,
104 N. W. 931.

Respondent contends that this is a correct statement of the law of this state and as such is binding upon the Federal Courts. Respondent further contends that while there may have been some little deviation from the true value of taxable property in Dakota County for the year 1918, that there has been no such discrimination as is complained of by petitioner.

"Perfect equality in the assessment of taxes is unattainable—approximation to it is all that can be had."

Bigelow, Chief Justice, in *Commonwealth vs. Savings Bank*, 5 Ala. 428.

"Perfect equal taxation will remain an unattainable good, as long as laws and government and men are imperfect."

Sharswood, J., in *Grimm vs. School District*, 57 Pa. St. 433.

"Equality can never be but approximation."

Redfield J., in *Allen vs. Drew*, 44 Vt. 174.

Petitioner's position is untenable and unsupported by the decisions cited, for the reason that it assumes a false hypothesis, in that the facts fail to disclose intentional assessment at a higher rate and a denial of the equal protection of the laws. For the petitioner to take the position that he has been denied equal protection of law is for him to beg the question, and to assume as true that which is directly and conclusively controverted by the facts as aduced from the evidence in this case.

Respondent assumes this position for the following reasons:

1. Mr. Thomas A. Polley is unqualified as an expert to fix values of real and personal property in Dakota County, Nebraska, for the reasons that he is wholly unfamiliar with local conditions and his theory of the valuation by the ratio process is purely speculative and without foundation in law.

2. Mr. Rockwell shows that he arrived at the valuation for assessment purposes by a fair and impartial method. His assessment of personal property, especially farm products, was fixed as the market value thereof and his real

estate values were established upon the basis of what a willing purchaser would pay to a willing seller.

3. The Court in *Louisville & N. R. Co. vs. Demuth*, 220 Fed. 191, 891. 4, states:

*"Constitutional Law—Equal Protection of the Law—Equality of Taxation—*Where the constitution of a state requires the equal taxation of all property the enactment by the Legislature of laws, or the action of executive officers in enforcing them, which in either case results in the intentional assessment or taxation of one class of property at a higher rate than another class is a denial of the equal protection of the law in violation of the Fourteenth Amendment."

The above case is relied upon by petitioner and the respondent contends that it properly states the law. For the protection afforded by this statement of the law to be extended to the petitioner he must have established himself as a proper showing regarding the discrimination he alleges to have been practiced. Respondent contends that no such discrimination has been shown to have been practiced in regard to the petitioner. There is no proof, either by inference or by dissection, to show discrimination in this matter, nor are there any facts that justify a conclusion as unreasonable in its nature. Neither the acts of the assessor in assessing the property nor the finding of the Board of Equalization of Dakota County, nor the finding of the District Court of Dakota County, nor the review of the Supreme Court of the State of Nebraska, justify any such false conclusion as is contended for by the petitioner.

IN CONCLUSION

We believe that were the petitioner apprised that the Fourteenth Amendment to the Federal Constitution would

xtend to it, its protection in this case; but the respondent respectfully submits that the petitioner has not been aggrieved in any manner or form so as to have recourse to aid under the provisions of this Amendment to the Constitution.

Respectfully submitted,

R. A. VAN ORSDER,
Counsel for Respondent.

GEORGE H. LEHMER,
GAINES, VAN ORSDER & GAINES,
J. W. MCGAN,
Of Counsel.





SUPREME COURT OF THE UNITED STATES.

No. 105.—OCTOBER TERM, 1922.

Sioux City Bridge Company,
vs.
Dakota County, Nebraska,

} On Writ of Certiorari to
the Supreme Court of
Nebraska.

[January 2, 1923.]

Mr. Chief Justice TAFT delivered the opinion of the Court.

This case is here by writ of certiorari to the Supreme Court of Nebraska. The question is whether the taxing authorities of the State of Nebraska and of Dakota County in assessing taxes against the plaintiff in error, the Sioux City Bridge Company, upon that part of its bridge across the Missouri River at South Sioux City, which is in the jurisdiction of Nebraska, deprived the Bridge Company of due process of law and denied it the equal protection of the laws in violation of the Fourteenth Amendment.

For a number of years before 1918, the Bridge Company had returned the Nebraska part of the bridge for taxation at \$600,000. In that year the assessor of Dakota County sent the blank return to the Bridge Company as usual, but the Bridge Company sent back the proposed return, refusing to sign, and insisting that the valuation was too high. The assessor then returned the bridge at \$600,000 as formerly. The Bridge Company appealed to the Board of Equalization of the county. Only the counsel for the Bridge Company and for the city of South Sioux City appeared. No witnesses were called and no evidence produced, but the Board of Equalization, on the appeal of the Bridge Company for reduction, raised the assessment above that of the assessor one hundred thousand dollars. From this ruling an appeal was taken to the District Court of Dakota County for relief against the action of the Board of Equalization on the ground that the valuation was excessive, was without evidence and arbitrary, that it violated the constitution of the State requiring a uniformity of taxing burdens,

and that it deprived the Bridge Company of due process and equal protection of the law as forbidden by the Fourteenth Amendment.

Seventy-four per cent. of the total value of the bridge is in Dakota County, Nebraska, and twenty-six per cent. is in Iowa. The original cost of the bridge was \$941,000, but some wooden trestles in the original construction were taken out and steel substituted and this increased the original cost to \$1,022,000. The bridge was built in 1888. Since 1907 it has been under lease to two railroads and jointly they maintain the bridge, pay the taxes and 8 per cent. on the original cost of \$945,800. The leases are short-time leases because the bridge while in good repair is too light for modern traffic and can only be used under burdensome and expensive restrictions. One of the railroad companies has made soundings for a new bridge. The engineers report the existing bridge to be totally out of date and estimate a depreciation in its value on this account of \$300,000 from its original cost. The same witnesses testified that to build the bridge just as it was would cost at present prices from \$1,300,000 to \$1,500,000, but that it would be most foolish to build a bridge of that old type now.

A tax commissioner of one of the lessee railroads, with long experience in taxation and valuation, testified that from an examination of the sales of real estate as shown by deeds of record in Nebraska and in Dakota County and the tax list, the acre property in Dakota County was assessed at 55.70 per cent. of its value, that improvements in city property were assessed at 49.29 per cent of their selling value, and had been so assessed for seven years. The county assessor thought such sales were not best evidence of true value in money and denied that there was any attempt to value at less than such value.

The District Court held the reasonable value of the bridge in Nebraska to be more than \$700,000 as assessed and dismissed the appeal. It made no finding upon the issue as to whether there was an undervaluation of other real estate and improvements in Dakota County or the State and did not refer to it.

The Bridge Company carried the case on appeal to the Supreme Court. That court found from the evidence that \$700,000 as the true value was not so manifestly wrong that it was justified in disturbing the assessment.

Taking up the objection that the real property and improvements were undervalued in Dakota County, the court said:

"It is finally urged that this Court should reduce the true value of the bridge as found by the Court to 55 per cent of such value, for the reason that other property in the district is assessed at 55 per cent of its true value, and that it would be manifestly unjust to appellant to assess its property at its true value while other property in the district is assessed at 55 per cent of its value.

While undoubtedly the law contemplates that there should be equality in taxation, we are of the view that the plan of equalization proposed by appellant is not the proper remedy. The rule is now settled by a recent decision of this Court that when property is assessed at its true value and other property in the district is assessed below its true value, the proper remedy is to have the property assessed below its true value raised, rather than to have property assessed at its true value reduced. *Lincoln Telephone and Telegraph Company v. Johnson County*, 102 Nebraska, 254. In the argument of appellant the soundness of this ruling is assailed and authorities in other jurisdictions are cited which seem at variance with our holding. We are not willing, however, to recede from the rule of that case."

Section 1, Article 9, of the Constitution of Nebraska, contains the following:

"The legislature shall provide such revenue as may be needed by levying a tax by valuation so that every person and corporation shall pay a tax in proportion to the value of his, her or its property and franchises, the value to be ascertained in such manner as the Legislature shall direct. . . ."

Section 6300 of the Revised Statutes of Nebraska provides:

"All property in this state not expressly exempt therefrom shall be subject to taxation, and shall be valued at its actual value which shall be entered opposite each item and shall be assessed at 20 per cent of such actual value. Such assessed value shall be entered in separate column opposite each item and shall be taken and considered as the taxable value of such property, and the value at which it shall be listed and upon which the levy shall be made. Actual value as used in this chapter shall mean its value in the market in the ordinary course of trade."

In the case of *Sunday Lake Iron Company v. Wakefield*, 247 U. S. 350, 352, 353, this Court said:

"The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execu-

tion through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. *Raymond v. Chicago Union Traction Company*, 207 U. S. 20, 35, 37." Analogous cases are *Greene v. Louisville & Interurban R. R. Co.*, 244 U. S. 499, 516, 517, 518; *Cummins v. National Bank*, 101 U. S. 153, 160; *Taylor v. Louisville & N. R. Co.*, 88 Fed. 350, 364, 365, 372, 374; *L. & N. Ry. Co. v. Bosworth*, 209 Fed. 380, 452; *Washington Water Power Company v. Kootenai County*, 270 Fed. 369, 374.

The charge made by the Bridge Company in this case was that the State, through its duly constituted agents, to wit, the county assessor and the County Board of Equalization, improperly executed the constitution and taxing laws of the State and intentionally and arbitrarily assessed the Bridge Company's property at 100 per cent. of its true value and all the other real estate and its improvements in the county at 55 per cent.

The Supreme Court does not make it clear whether it thinks the discrimination charged was proved or not, but assuming the discrimination, it holds that the Bridge Company has no remedy except "to have the property assessed below its true value raised rather than to have property assessed at its true value reduced." The dilemma presented by a case where one or a few of a class of taxpayers are assessed at one hundred per cent. of the value of their property in accord with a constitutional or statutory requirement, and the rest of the class are intentionally assessed at a much lower percentage in violation of the law, has been often dealt with by courts and there has been a conflict of view as to what should be done. There is no doubt, however, of the view taken of such cases by the federal courts in the enforcement of the uniformity clauses of state statutes and constitutions and of the equal protection clause of the Fourteenth Amendment. The exact question was considered at length by the Circuit Court of Appeals of the Sixth Circuit in the case of *Taylor v. Louisville & Nashville R. Co.*, 88 Fed. Rep. 350, 364, 365, and the language of that court was approved and incorporated in the decision of this Court in *Greene v. Louisville & Interurban R. R. Co.*, 244 U. S. 499, 516, 517, 518. The conclusion in these and other federal authorities is that such a result as that reached by the Supreme Court of Nebraska is to deny the injured taxpayer any remedy at all because it is utterly im-

possible for him by any judicial proceeding to secure an increase in the assessment of the great mass of under-assessed property in the taxing district. This Court holds that the right of the taxpayer whose property alone is taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. In substance and effect the decision of the Nebraska Supreme Court in this case upholds the violation of the Fourteenth Amendment to the injury of the Bridge Company. We must, therefore, reverse its judgment.

But we construe the action of the court not to be equivalent to a finding that such intentional discrimination existed between the valuation of the Bridge Company's property and that of all other real property and improvements in the county, but rather a ruling that even if it did exist, the Bridge Company must continue to pay taxes on a full 100 per cent. valuation of its property. It was on the same principle, doubtless, that the District Court ignored the issue of discrimination altogether. It is therefore just that upon reversal we should remand the case for a further hearing upon the issue of discrimination, inviting attention to the well-established rule in the decisions of this Court, cited above, that mere errors of judgment do not support a claim of discrimination, but that there must be something more—something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Sunday Lake Iron Company v. Wakefield*, 247 U. S. 350, 353.

The judgment of the Supreme Court of Nebraska is reversed and is remanded for further proceedings not inconsistent with this opinion.

A true copy.

Test:

Clerk, Supreme Court, U. S.